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1 Q. And there are some troopers who were on  
2 suspended with pay status facing discipline or  
3 criminal charges who were on suspended with pay status  
4 for a full two years?  
5 **A. That I don't know. I don't know if, I don't**  
6 **know if there's instances where it would go up to two**  
7 **full years being suspended with or without pay. That**  
8 **I'm not sure about, sir.**  
9 Q. You know it went beyond, some went beyond one  
10 year I think you're telling me?  
11 **A. Yeah. Yeah.**  
12 Q. And you just right now don't have any names,  
13 right?  
14 **A. No. I mean no.**  
15 Q. Then we have our next one is a Corporal Bo  
16 Sarley. Does that ring a bell with you?  
17 **A. I know the name. I know he was on the job, but**  
18 **I don't know his extent of injuries or disability or**  
19 **any of those things.**  
20 Q. Do you know if he was a trooper?  
21 **A. He was a trooper. I know he worked in the**  
22 **north.**  
23 Q. In the north?  
24 **A. But that's about it.**

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1 Q. Do you know if he had a back injury?  
2 **A. No, I don't.**  
3 Q. You don't know the nature -- do you know  
4 whether he had an injury?  
5 **A. No, I don't.**  
6 Q. You don't know anything about him?  
7 **A. I don't know anything about him.**  
8 Q. So you haven't looked at his record?  
9 **A. No.**  
10 Q. Do you know if he's retired?  
11 **A. He's been gone a while, I believe. The only**  
12 **reason I even know the name is because he FTO'd a**  
13 **friend of mine, but other than that I don't really**  
14 **know the guy.**  
15 Q. I think you said he was in the north?  
16 **A. Yes.**  
17 Q. Major Baylor's career was in the north, right?  
18 **A. Right.**  
19 Q. How about a Corporal Thomas Robbins, do you  
20 know anything about him and an injury in a helicopter  
21 crash?  
22 **A. Yes. I know that he was assigned aviation. He**  
23 **had a helicopter crash. That was probably, wow, in**  
24 **the early to mideighties. I know he has separated**

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1 **from the job, he retired and I believe he applied for**  
2 **a disability pension.**  
3 **But beyond that I don't know the extent of**  
4 **his injuries or how long he was out or how long he was**  
5 **on light duty or any of those things.**  
6 Q. Do you know if he was on light duty?  
7 **A. I believe he was at different times.**  
8 Q. Do you know if he retired and sought a  
9 disability pension?  
10 **A. I believe he did, yes, sir.**  
11 Q. Do you know if he got a disability pension?  
12 **A. I don't know.**  
13 Q. And how about a Corporal Michael Linz, L-i-n-z?  
14 **A. Mike Linz? Yeah. He's another one. I mean,**  
15 **he's been gone for a while. I worked with him briefly**  
16 **at Troop 3. I just vaguely remember he had some sort**  
17 **of injury.**  
18 Q. Was it a neck injury?  
19 **A. I don't recall.**  
20 Q. He had some sort of an injury?  
21 **A. Right. And I want to say he had applied for a**  
22 **pension, disability pension, but I don't know if he**  
23 **got it or not.**  
24 Q. Are you aware that he was on light duty for two

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1 years?  
2 **A. That sounds -- I know, I know he had been on**  
3 **light duty. As a matter of fact, I think he ended his**  
4 **career in KentCom, which is the dispatch center.**  
5 Q. Right. That's like the 911 center?  
6 **A. Yes. Yes, sir.**  
7 Q. Okay.  
8 **A. And so I wouldn't doubt it if he had been on**  
9 **light duty that long.**  
10 Q. Thank you.  
11 How about a Laurel Mehew-King, does that  
12 name ring a bell?  
13 **A. She is -- she I believe worked out of Troop 9.**  
14 Q. Troop 9?  
15 **A. Yes. Patrol. She's actually a classmate of**  
16 **mine. I'm somewhat familiar with her. I do know that**  
17 **she had been in a car crash or rear-ended I believe**  
18 **was the case and sustained a back injury. I'm pretty**  
19 **sure she went off on a disability.**  
20 **I don't know if it was, you know, full**  
21 **disability or partial disability. I don't know the**  
22 **time period she was in and out of work, but I do know**  
23 **she did sustain a pretty severe back injury.**  
24 Q. And then she went off on retirement or

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1 disability is what you're saying?  
2 **A. Yes, sir.**  
3 Q. Now, was this in the late eighties?  
4 **A. I believe probably late eighties, yeah, that**  
5 **sounds about right.**  
6 Q. And she was on light duty before she went --  
7 **A. I would assume, yeah.**  
8 Q. You're not sure?  
9 **A. No.**  
10 Q. You don't know one way or the other?  
11 **A. No.**  
12 Q. You said she did have a back injury, a car  
13 crash?  
14 **A. Yes. And I know she applied for a pension and**  
15 **I'm pretty sure she got it, but the light-duty status**  
16 **I'm not sure about.**  
17 Q. Does this ring a bell, first 25-year trooper to  
18 pension off? Maybe she was a precedent setter? Does  
19 that ring any bells with you?  
20 MR. FITZGERALD: I object to form.  
21 **A. No, not really.**  
22 Q. So you don't know if she was on or off light  
23 duty?  
24 **A. No. No.**

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1 Q. How about Trooper Randy Armistad?  
2 **A. Randy Armistad? I'm not familiar with the**  
3 **medical file. However, I know he was involved in a**  
4 **horrendous crash and underwent a tremendous amount of**  
5 **rehabilitation in an attempt to come back onto the job**  
6 **and he never did. I don't know how long he was out.**  
7 **Let me correct that. I don't know that he**  
8 **ever came back to be on light duty or anything like**  
9 **that. I think he had the crash and he went through a**  
10 **tremendous amount of rehabilitation and I just don't**  
11 **recall him ever coming back to work.**  
12 Q. Well, do you recall -- and I think Major Baylor  
13 has testified that he was pensioned off after two  
14 years, two years after his injury. What would that  
15 tell you? What does that mean? That he was paid for  
16 the two years, be it sick leave or worker's comp. or  
17 what?  
18 **A. Yeah. Sure. He was probably compensated for**  
19 **that two-year period. I can't imagine him not being**  
20 **under those circumstances.**  
21 Q. Well, let me ask. How much sick leave does a  
22 trooper accumulate in an average year?  
23 **A. Well, it's one-and-a-quarter days per month,**  
24 **ten days a year.**

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1 Q. So you accumulate ten days a year?  
2 **A. Right.**  
3 Q. So if you're a ten-year trooper, you will  
4 accumulate a hundred days of sick leave?  
5 **A. Right.**  
6 Q. Right?  
7 **A. (The witness nodded.)**  
8 Q. A twenty-year trooper will only have  
9 accumulated, if he's never been sick will only have  
10 accumulated 200 days of sick leave?  
11 **A. Right.**  
12 Q. And 200 days I guess divided by 5 days a week  
13 gives you how many weeks could you accumulate over a  
14 20-year career?  
15 **Let's do it. Here we go. 200 divided by**  
16 **5. That should be easy. That's 40 weeks. Do you**  
17 **agree?**  
18 **A. Yeah.**  
19 Q. So if you have been a trooper for 20 years and  
20 you have never taken a sick day, at the end of your  
21 20th year you would have accumulated 40 weeks of pay?  
22 **A. Right.**  
23 Q. So if you're Trooper Armistad -- and I don't  
24 know how many years he had been a trooper. When he

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1 was injured, do you know if he was a ten-year trooper  
2 or --  
3 **A. No. He hadn't been on long at all.**  
4 Q. So he didn't really have a lot of sick leave?  
5 **A. No.**  
6 Q. So he might have had --  
7 **A. Workmen's comp.**  
8 Q. Okay.  
9 **A. Coupled with whatever time he had on the books.**  
10 **Beyond that, I really don't know how he was**  
11 **compensated.**  
12 Q. Right. He could have been compensated by being  
13 put on a light-duty list, couldn't he?  
14 **A. Sure. Yeah.**  
15 Q. That's all I'm trying to understand.  
16 **A. Gotcha.**  
17 Q. This was I think we were talking about in his  
18 incident, his terrible accident happened in the  
19 eighties sometime, right?  
20 **A. Right.**  
21 Q. And you joined the force back in the eighties?  
22 **A. '83.**  
23 Q. '83. And it's been the policy of the State  
24 Police since you've been on the force that if a

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1 trooper is injured the State Police tries to ensure  
2 that the trooper has a steady income, a steady stream  
3 of his wage and benefits, his wage and benefits for as  
4 long as permitted?  
5 **A. Correct.**  
6 Q. Is that a fair statement?  
7 **A. Yep, even to the extent we have a shared**  
8 **compensation or leave program. If someone is really**  
9 **down on their time or usage of time, we can put**  
10 **something out throughout the state for other state**  
11 **employees or people within the division to donate**  
12 **leave for coverage, so yeah.**  
13 Q. But when we're talking about light duty,  
14 there's some provisions that -- well, let's go back to  
15 Citro.  
16 When you were talking about Captain Citro,  
17 you talked about he was running up against a two-year  
18 barrier. Do you remember that?  
19 **A. Yes.**  
20 Q. And you were telling him when you called him  
21 that he was running up or two years was as long as he  
22 was going to be permitted under the policies to be in  
23 this status, right?  
24 **A. Unless he could demonstrate recovery, which he**

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1 **couldn't.**  
2 Q. Right. Right. But there was a ceiling on how  
3 long he could be in that status?  
4 **A. Yes.**  
5 Q. Right?  
6 **A. Right.**  
7 Q. And when we go back to Trooper Armistad I think  
8 you're telling me if he didn't have a lot of  
9 accumulated sick leave and people didn't donate a lot  
10 of sick leave to him, if that was allowed back then,  
11 if he was kept for two years it would have had to be  
12 in some combination of other statuses that he was put  
13 in to let him keep his income going?  
14 MR. FITZGERALD: I object to form and  
15 foundation.  
16 **A. Yes.**  
17 Q. One option of which would have been he could  
18 have been put on light-duty status?  
19 MR. FITZGERALD: I object to foundation.  
20 **A. If that was, in fact, the case.**  
21 **Are you suggesting he was put on light**  
22 **duty?**  
23 Q. No. I'm saying that was an option.  
24 **A. Yeah. Oh, yeah. Sure. Sure.**

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1 Q. Sure?  
2 **A. Yeah.**  
3 Q. Right. Then I have got a Mark Gibbons. Does  
4 that name ring a bell with you, Mark Gibbons?  
5 **A. No.**  
6 Q. No?  
7 **A. Don't know him.**  
8 Q. Then we have an Herb Murray. Does that name  
9 ring a bell with you?  
10 **A. Herb Murray? Burt Murray?**  
11 Q. No. I just have a Herb Murray, M-u-r-r-a-y.  
12 **A. No.**  
13 Q. How about a Rick Van Brunt?  
14 **A. No.**  
15 Q. Then we're almost done the list here.  
16 **A. Those guys must have been a lot older.**  
17 Q. Maybe.  
18 A Lieutenant Jeff David?  
19 **A. Yes.**  
20 Q. A detective in licensing?  
21 **A. Yes.**  
22 Q. Do you know anything about him and his stroke?  
23 **A. Yes, I do. He had a stroke and he was out**  
24 **almost two years to the day prior to coming back to**

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1 **work.**  
2 Q. Okay. So he had a stroke and then he --  
3 **A. For full-duty status I mean.**  
4 Q. Right. After his stroke he was put on light  
5 duty?  
6 **A. Yeah. He was actually out for quite a while**  
7 **after the stroke, I mean actually out on medical, came**  
8 **back to work in a light-duty capacity and probably on**  
9 **light duty close to a year before he went back to**  
10 **full-duty status. I'm pretty sure he came really**  
11 **close to the two-year mark.**  
12 Q. So I think what you're saying is that he had  
13 the stroke and he probably used a lot of sick leave,  
14 right?  
15 **A. Yes.**  
16 Q. And you, for example, could have 40 weeks or  
17 whatever of sick leave?  
18 **A. Right.**  
19 Q. And then he was able to come back on a  
20 light-duty status?  
21 **A. Yes.**  
22 Q. And then he was starting to approach this  
23 two-year mark and he was able to get himself back on  
24 full-duty status before he hit that two-year mark?

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1 **A. Correct.**  
2 Q. If he had hit the two-year mark, then he might  
3 have had to sever his relationship with the division  
4 and retire?  
5 **A. Possibly, yes.**  
6 Q. Possibly?  
7 **A. Yeah.**  
8 Q. Do you know what his assignment was before his  
9 stroke, I mean what he was a lieutenant of? Upstate?  
10 Downstate? What troop? What function?  
11 **A. I thought he had been at SBI, a detective in**  
12 **licensing when it occurred, State Bureau of**  
13 **Identification.**  
14 Q. So that means he works out of licensing?  
15 **A. Correct.**  
16 Q. And lastly a Steve Swaine, does that --  
17 **A. Sure. A sergeant --**  
18 Q. Steve Swaine.  
19 **A. -- assigned to the evidence detection unit at**  
20 **Troop 4. I'm not familiar with his medical status**  
21 **though.**  
22 Q. Do you know if he has a speech impediment or  
23 not?  
24 **A. He does have that, yes.**

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1 Q. Does that cause him to be on a light-duty  
2 status?  
3 **A. No.**  
4 Q. Do you know if he's ever been on a light-duty  
5 status?  
6 **A. No. I'm not aware, no. No.**  
7 Q. Does the speech impediment impair his ability  
8 to perform all the functions of the job?  
9 **A. Not that I'm aware of. I mean, I've worked**  
10 **with him at different crime scenes. He seems to --**  
11 **it's a hoarseness in his voice, especially when he**  
12 **gets kind of nervous or excited, but it seems like he**  
13 **could communicate pretty well.**  
14 Q. With witnesses and things like that?  
15 **A. Yeah.**  
16 Q. Let's move off of that.  
17 **A. Okay.**  
18 MR. FITZGERALD: Tom, can I get two  
19 minutes?  
20 MR. NEUBERGER: Yes.  
21 (A brief recess was taken.)  
22 BY MR. NEUBERGER:  
23 Q. I did have one more name that came up. Okay?  
24 **A. Okay.**

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1 Q. A Scott Kleckner with some sorts of  
2 degenerative changes to his hips or whatever, does  
3 that ring a bell for you?  
4 **A. I know who he is, but I'm not familiar with his**  
5 **medical history.**  
6 Q. Well, who is he? Is he a currently trooper?  
7 **A. Yes. I believe he works out of Troop 9.**  
8 Q. He works out of Troop 9?  
9 **A. Yes.**  
10 Q. Do you know how many years he's been on the  
11 force approximately?  
12 **A. I don't. He hasn't been on there a real long**  
13 **time, but -- yeah. I think less than ten.**  
14 Q. But you don't know anything at all about his  
15 medical condition?  
16 **A. No, sir.**  
17 Q. You don't know if he's had a medical condition  
18 that's been accommodated or not?  
19 **A. I'm not familiar with it.**  
20 Q. Do you know what his assignment is at Troop 9?  
21 **A. Patrol as far as I know.**  
22 Q. He's just a patrol officer?  
23 **A. Yeah.**  
24 Q. All right. Let's just move on.

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1 **A. Yes.**  
2 Q. I need to understand how a trooper, in some  
3 circumstances how a trooper is declared unfit for  
4 duty.  
5 We all know troopers carry weapons, right?  
6 **A. (The witness nodded.)**  
7 Q. Yes?  
8 **A. Yes.**  
9 Q. There are times when trooper's psychiatric  
10 fitness can be called in question. Is that true?  
11 **A. That's correct.**  
12 Q. And the State Police retains the authority to  
13 send troopers for fitness for duty exams out of  
14 psychiatric concerns. Is that correct?  
15 **A. That's correct.**  
16 Q. So, for example, troopers witness grisly  
17 crimes, right?  
18 **A. Right.**  
19 Q. Troopers investigate suicides?  
20 **A. Yes.**  
21 Q. You know, very sad occasions and things like  
22 that, right?  
23 **A. Right.**  
24 Q. That's all part of a very difficult job, right?

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- 1 **A. Yes.**  
2 Q. If you suspect that a trooper is having  
3 emotional or other kinds of issues that could  
4 interfere with his doing his job properly, does the  
5 State Police on occasion send troopers for fitness for  
6 duty exams?  
7 **A. Yes.**  
8 Q. Once again, I'm focusing on psychiatric issues  
9 here.  
10 **A. Right.**  
11 Q. So, for example, you could send a trooper off  
12 to have a psychiatrist exam them?  
13 **A. Yes.**  
14 Q. If the psychiatrist says that the trooper is  
15 unfit for duty, you would have to take action?  
16 **A. Yes.**  
17 Q. Right. Somebody would have to make a decision  
18 on whether the trooper should have his duty status  
19 altered?  
20 **A. Yes.**  
21 Q. Would that be the colonel or HR?  
22 **A. That's the colonel.**  
23 Q. That's the colonel?  
24 **A. Right.**

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- 1 Q. So in the past have troopers been found unfit  
2 for duty because of psychiatric issues?  
3 **A. Yes.**  
4 Q. And is there a status they're placed in  
5 regularly or do they go off on sick leave, whatever?  
6 **A. It's both.**  
7 Q. Tell me about it.  
8 **A. In some instances the forensic psychologist --**  
9 **that's what we use, is a forensic psychologist that we**  
10 **contract with.**  
11 Q. Who would that be?  
12 **A. Dr. Karen DeBernardo from Baltimore County,**  
13 **Maryland.**  
14 Q. Okay. Go ahead.  
15 **A. She will make a recommendation that a person is**  
16 **not fit for duty and one of two things will occur.**  
17 **She will either recommend that they be placed on a**  
18 **light-duty assignment, minimizing or diminishing their**  
19 **regular assigned duties while they're either being**  
20 **medicated or receiving counseling. In most instances**  
21 **she will recommend that within 30 to 60 days that they**  
22 **come back to see her for reevaluation, at which time**  
23 **she will evaluate them and indicate whether or not**  
24 **they should continue on light duty or return to**

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- 1 **full-duty status.**  
2 **There have been some very limited**  
3 **circumstances where she has come back and said, "I**  
4 **don't think it's in the best interest of this**  
5 **individual or the department for the person to return**  
6 **to work at this time in a light-duty or full-duty**  
7 **capacity but to be off on leave, medical leave pending**  
8 **counseling, medication and further evaluation." And**  
9 **the couple of instances I'm thinking of the person was**  
10 **basically out on medical using their sick time and**  
11 **they were reevaluated and then placed in a light-duty**  
12 **capacity and then evaluated in some instances -- well,**  
13 **actually not some. I think in all instances I can**  
14 **recall they came back for another evaluation, at which**  
15 **time she said okay, now they can return to full duty.**  
16 Q. So if your psychologist, your psychiatrist  
17 finds there are issues, you're saying historically  
18 there's two options or two paths that have been  
19 followed, right?  
20 **A. Right. Or they're fit for duty. I didn't**  
21 **throw that in. In some instances they're fine. It's**  
22 **more of a behavioral issue as opposed to something**  
23 **psychology.**  
24 Q. So the first option or path we were talking

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- 1 about was the healthcare professional has recommended  
2 and people have been placed on light duty while  
3 they're taking their meds and/or getting counseling,  
4 right?  
5 **A. Yes. Usually a combination thereof.**  
6 Q. Right. Then the periodic reevaluations,  
7 correct?  
8 **A. Correct.**  
9 Q. But also there's precedence for the medical  
10 condition being such that the psychiatrist says they  
11 should basically be on a medical leave?  
12 **A. Right.**  
13 Q. While they're taking their meds and getting  
14 their counseling and getting their head together?  
15 **A. Yes.**  
16 Q. Now, what happens when you go on medical leave?  
17 I mean, how do they -- they're just using their sick  
18 leave?  
19 **A. Yes.**  
20 Q. What if there isn't any sick leave available,  
21 what happens?  
22 **A. I don't think we have had any where we haven't**  
23 **had it, I don't think we have had that situation yet.**  
24 Q. Okay. But the precedent is that sometimes

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1 people while they're recuperating have just been put  
2 on a status where they're not reporting to the job?  
3 **A. Right. Right.**  
4 Q. But they're still receiving pay and benefits?  
5 **A. Yes. Yes. Definitely.**  
6 Q. I guess sometimes, sometimes have I seen  
7 references to a leave of absence and things like that?  
8 Can you still be carried on the rolls but receive a  
9 leave of absence?  
10 **A. (Witness shakes head).**  
11 Q. No?  
12 **A. No.**  
13 Q. We will talk about that a little bit later.  
14 We're going to look at your regulations or whatever.  
15 But a leave of absence doesn't ring any  
16 bells for you?  
17 **A. No. I mean, I'm familiar with the term, but**  
18 **it's not typically a paid leave of absence.**  
19 Q. No, I'm not talking paid. Aren't there unpaid  
20 leaves of absences where your benefits haven't ended  
21 yet?  
22 **A. Terminal leave. Is that what you're making**  
23 **reference to?**  
24 Q. Well, terminal leave they're paying paid,

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1 right?  
2 **A. Right. I mean, you're out of the workplace,**  
3 **but you're being paid your accumulated vacation, sick**  
4 **leave, comp time, whatever the case may be.**  
5 Q. Right.  
6 **A. But when I think of leave of absence I'm**  
7 **thinking of someone who has requested a six-month,**  
8 **twelve-month leave to go and do whatever it is that**  
9 **they're seeking to do with the colonel's permission**  
10 **and that is unpaid.**  
11 Q. No. I understand. I understand that.  
12 But can you be on an unpaid leave of  
13 absence where you're still drawing your non-wage  
14 benefits, in other words, you're still getting your  
15 medical insurance, that kind of stuff?  
16 **A. No.**  
17 Q. No?  
18 **A. No.**  
19 Q. So unpaid leave of absence means you're not  
20 getting benefits or wages?  
21 **A. Right.**  
22 Q. Let's have a couple of things marked. Let's  
23 talk about a couple of things here.  
24 **A. Okay.**

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1 Q. I have here some exhibits that were marked at  
2 the deposition of Dave Baylor. Okay? Let me show you  
3 what was marked as Baylor Deposition Exhibit 1.  
4 MR. NEUBERGER: I have got a copy here for  
5 you, Robert, if you want.  
6 BY MR. NEUBERGER:  
7 Q. Here was Baylor Deposition Exhibit No. 1 which  
8 was a letter to Kurt Price dated June 25th, 2003. I'm  
9 going to ask you, first of all, if that's a typo and  
10 it should be 2004. We will put that in front of you  
11 first.  
12 Now, have you seen this before?  
13 **A. Yes.**  
14 Q. Now, that is a letter. It does have a typo at  
15 the top. It should say June 25, 2004. Is that  
16 correct?  
17 **A. 2004, right.**  
18 Q. Now, this was a letter that Colonel MacLeish  
19 sent to Kurt Price, right?  
20 **A. Right.**  
21 Q. And then let me show you what was Baylor  
22 Deposition Exhibit No. 2. This is a similar letter to  
23 Wayne Warren bearing the same date.  
24 **A. (Reviewing document).**

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1 Q. This Wayne Warren letter, it had a typo at the  
2 top also, right?  
3 **A. Yes.**  
4 Q. So that should also be 2004?  
5 **A. Four.**  
6 Q. Right?  
7 **A. Right.**  
8 Q. Now, both these letters are signed by  
9 Lieutenant Colonel Thomas MacLeish, right?  
10 **A. Correct.**  
11 Q. Then you received copies of them. Is that  
12 correct?  
13 **A. Yes.**  
14 Q. Now, these letters are identical, aren't they?  
15 **A. They would appear so, yes.**  
16 Q. Now, in this letter both Corporals Price and  
17 Warren were placed on light-duty status as of June 25,  
18 2004. Is that correct?  
19 **A. Correct.**  
20 Q. And we're going to sort of march through it  
21 here. Let's start with the first paragraph. Okay?  
22 **A. Okay.**  
23 Q. At the end of the first paragraph it says, "you  
24 will be considered in a light duty status." Is that

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1 correct?  
2 **A. Correct.**  
3 Q. Then if we look at item No. 1, it says, "Your  
4 work status will be Light Duty." Is that correct?  
5 **A. Yes.**  
6 Q. And it goes on and says, "Non-Uniformed  
7 consisting of administrative desk duties," right?  
8 **A. Right.**  
9 Q. And then in No. 3 it says they're allowed to  
10 keep their weapon but it wasn't to be used for police-  
11 related duties, right?  
12 **A. Right.**  
13 Q. Do you see that?  
14 **A. Yes.**  
15 Q. No. 4 talked about what they had to do if they  
16 observed a crime in progress, right?  
17 **A. Right.**  
18 Q. Now, Lieutenant Colonel MacLeish had the  
19 authority to send this letter, correct?  
20 **A. Correct.**  
21 Q. And did you disagree with this letter going  
22 out?  
23 Let me put it this way: The lieutenant  
24 colonel made the decision to put them on light-duty

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1 status. Is that correct?  
2 **A. Correct.**  
3 Q. That was his decision to make, right?  
4 **A. Yes.**  
5 Q. Is that because the lieutenant colonel has  
6 operational command of the various troops under the  
7 organizational structure?  
8 **A. Correct.**  
9 Q. So this was his decision to make?  
10 **A. Correct.**  
11 Q. Now, before doing that would he have consulted  
12 with the colonel, Aaron Chaffinch, at the time, if you  
13 know?  
14 **A. I don't know if he did or didn't.**  
15 Q. You don't know. We would have to ask him about  
16 that?  
17 **A. Yes.**  
18 Q. And as far as the reasons why he sent them this  
19 letter, would we have to ask him or had he told you  
20 the reasons why he sent this letter?  
21 **A. I mean, I had discussed this letter with the**  
22 **lieutenant colonel.**  
23 Q. Has he ever told you the reasons for putting  
24 them on light-duty status?

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1 **A. Yeah. Based on the recommendations from**  
2 **Dr. Green due to the concern about their hearing and**  
3 **being deemed not fit for duty by Dr. Aaron Green.**  
4 Q. I'm just trying to focus on why he sent the  
5 letter. And I think you're telling me that you did  
6 have a discussion about that with him?  
7 **A. Absolutely. Yeah.**  
8 Q. So I think you're telling me that he told you  
9 that the reason he was sending the letter was because  
10 Dr. Green had concerns about their hearing?  
11 **A. Right. Well, I mean, this --**  
12 Q. I'm going to try to get into as many reasons as  
13 you have. I'm not locking you in. I'm just trying to  
14 get this one down. Okay?  
15 **A. Right.**  
16 Q. Did he indicate other reasons why he was  
17 sending the letter?  
18 **A. No. Only that because of Dr. Green's**  
19 **evaluation that they should be placed on light duty.**  
20 Q. And was this discussion with him held before or  
21 after he sent the letter?  
22 **A. It would have been before.**  
23 Q. Shortly before?  
24 MR. FITZGERALD: I object to form.

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1 Q. Was it that day or that week?  
2 **A. It probably would have been the preceding week**  
3 **because I think their evaluation was actually about a**  
4 **week or more before this letter.**  
5 Q. Let me just turn to something. Okay. Let's  
6 move on from that.  
7 MR. NEUBERGER: You can keep those if you  
8 want, Robert.  
9 (Discussion off the record.)  
10 BY MR. NEUBERGER:  
11 Q. Then I want to show you a letter dated May  
12 11th, 2005.  
13 MR. NEUBERGER: Let's mark this. I think  
14 this will be the second deposition exhibit here.  
15 (Yeomans Deposition Exhibit No. 2 was  
16 marked for identification.)  
17 BY MR. NEUBERGER:  
18 Q. Have you looked at that letter?  
19 **A. Yes.**  
20 Q. Why don't you read it over? You have read that  
21 over?  
22 **A. (Reviewing document).**  
23 Q. Now, is this a letter that then Colonel  
24 MacLeish sent to Kurt Price on May 11th of 2005?

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1 **A. Yes, it is.**  
2 Q. And is this a letter indicating that Kurt  
3 Price's light-duty assignment was going to have to end  
4 as of June 10th, 2005?  
5 Do you see the last paragraph?  
6 **A. Yes.**  
7 Q. So as of the date of this letter was Kurt Price  
8 being told that his light-duty assignment was going to  
9 have to end on that date?  
10 **A. That's correct.**  
11 Q. Did Colonel MacLeish explain to you -- well,  
12 did Colonel MacLeish make the decision to send this  
13 letter?  
14 **A. Yes.**  
15 Q. And did Colonel MacLeish ever explain to you  
16 the reasons why he sent this letter?  
17 **A. Yeah. I mean, it was in conversation about the**  
18 **determination made by Dr. Emmett and Kurt Price's, you**  
19 **know, inability to recover essentially and his**  
20 **interpretation of the policy was such that it was two**  
21 **years and out.**  
22 **So, yeah, that's why he decided to send**  
23 **him the letter.**  
24 Q. I want to make sure I understand that.

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1 So, first of all, we know Colonel MacLeish  
2 made the decision to send this letter, right?  
3 **A. Yeah. I mean, that's ultimately the decision.**  
4 Q. Right. And then you're telling me -- I'm  
5 asking you the reasons why he sent the letter and I  
6 think you're saying the first reason was that this  
7 Dr. Emmett had said some things?  
8 **A. Right.**  
9 Q. Right?  
10 **A. Yeah.**  
11 Q. And then I think you're saying the second  
12 reason he sent it was something about policy. What  
13 were you trying to tell me? I didn't quite get it.  
14 **A. That our policy was that he could keep them on**  
15 **up to two years light duty or accommodate them, unless**  
16 **there was no indication that they would be able to**  
17 **recover. And based on what Dr. Emmett was saying**  
18 **here, the colonel decided that he would essentially**  
19 **adhere to that policy or his interpretation of the**  
20 **policy and direct Kurt Price to separate from the**  
21 **division.**  
22 Q. So I think you're telling me on the second  
23 reason was that the colonel had an interpretation of  
24 the Delaware State Police's policy on light duty?

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1 **A. Correct.**  
2 Q. And that the colonel decided to adhere to his  
3 interpretation of the policy?  
4 **A. Correct.**  
5 Q. And according to his interpretation of the  
6 policy, he would not be able to keep them for two  
7 years if there was no possibility of Kurt Price  
8 recovering from his medical condition?  
9 **A. That's correct.**  
10 Q. Okay. Did the colonel explain to you how he  
11 had come to that interpretation of the policy?  
12 **A. No.**  
13 Q. Okay. Thank you.  
14 Okay. I just want to look at the letter  
15 now, a few things in the letter. There's no dispute  
16 that Kurt Price was on light-duty status prior to  
17 getting this letter, right?  
18 **A. Correct.**  
19 Q. The earlier document we had talked about,  
20 Baylor Deposition Exhibits 1 and 2, specifically  
21 mentioned putting them on light duty. You remember  
22 that?  
23 **A. Right.**  
24 Q. And in paragraph two of the document in front

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1 of you, Yeomans Exhibit 2, he mentions light duty  
2 again.  
3 Do you see that?  
4 **A. Yes.**  
5 Q. So we're starting from the baseline that Kurt  
6 Price had been on light-duty status, right?  
7 **A. Right.**  
8 Q. And then he says in the third paragraph, the  
9 fourth line down "I am not aware of any situation in  
10 which a trooper remained on light duty after receiving  
11 word that a return to full duty was medically  
12 impossible."  
13 Do you see that?  
14 **A. I do.**  
15 Q. So that the colonel is indicating there that it  
16 would be unprecedented to allow Kurt Price to stay on  
17 for two years. Is that a fair reading of that?  
18 **A. To his knowledge. That's how I would interpret**  
19 **that.**  
20 Q. Right. We talked about Bruce Peachey earlier  
21 today, for example.  
22 **A. Sure.**  
23 Q. And I think we talked about the injuries to his  
24 ankle?

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1 **A. Right.**  
2 Q. And we may have talked about Major Baylor  
3 testifying that his ankle was shattered. Do you  
4 remember that?  
5 **A. Yes.**  
6 Q. And I think we may have talked about Major  
7 Baylor testifying that somewhere within three to six  
8 months after Peachey's injuries he went to the colonel  
9 about putting him on light-duty status for two years.  
10 Do you remember that testimony that I  
11 pointed out?  
12 **A. Yes.**  
13 MR. FITZGERALD: Again, I will object only  
14 to the extent that the testimony is what the testimony  
15 is in the Baylor deposition.  
16 BY MR. NEUBERGER:  
17 Q. Did the lieutenant, well, did now Colonel  
18 MacLeish examine whether the Bruce Peachey incident  
19 would have been a precedent for allowing Kurt Price to  
20 stay on?  
21 **A. If he did, I'm not aware of it. I don't know.**  
22 Q. Right. So you're unaware of whether or not he  
23 looked into how Bruce Peachey had been treated by the  
24 State Police?

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1 **A. He may have. He may not have.**  
2 Q. Right. You just don't know?  
3 **A. I don't know.**  
4 Q. Then we talked about Major Forrester earlier  
5 today.  
6 Do you remember that?  
7 **A. Yes.**  
8 Q. And it's fair to say that, well, Colonel  
9 MacLeish came up through Troop 3 in Dover, didn't he?  
10 **A. Right.**  
11 Q. Right?  
12 **A. Yes.**  
13 Q. And Colonel MacLeish was the operations  
14 commander for Kent and Sussex County in his career,  
15 right?  
16 **A. Yes.**  
17 Q. Colonel MacLeish replaced Major Forrester as  
18 the operations commander for Kent and Sussex County  
19 when Major Forrester retired, correct?  
20 **A. That's correct.**  
21 Q. Then Major MacLeish had worked with Major  
22 Forrester when Major Forrester was his superior  
23 officer in the chain of command, right?  
24 **A. Right.**

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1 Q. So now Colonel MacLeish had a personal, had in  
2 the course of his career interacted with Major  
3 Forrester?  
4 **A. Sure.**  
5 Q. Sure. He had worked with him, right?  
6 **A. Yeah.**  
7 Q. And is it fair to say that Colonel MacLeish  
8 knew that Major Forrester had at least one hearing  
9 device in his ears?  
10 MR. FITZGERALD: I'll object to the form.  
11 MR. NEUBERGER: Sure.  
12 BY MR. NEUBERGER:  
13 Q. You're a police officer and you're trained to  
14 be attentive to detail. Isn't that true?  
15 **A. Correct.**  
16 Q. Right?  
17 **A. Right.**  
18 Q. Part of your job is to take in your  
19 surroundings and be aware of what's going on around  
20 you, right?  
21 **A. If he was wearing one you would think he**  
22 **probably observed it.**  
23 Q. Right.  
24 **A. Okay.**

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1 Q. Okay. Did Colonel MacLeish tell you that when  
2 he was talking, when he was saying that there was no  
3 precedent for allowing Kurt Price to stay on now that  
4 he had an injury that was permanent, did he tell you  
5 he had looked into the situation relating to Major  
6 Forrester and his wearing hearing aids?  
7 **A. No, not specifically. That name -- I mean, if**  
8 **I could, that particular line where he's saying, "I am**  
9 **not aware of any situation in which a trooper remained**  
10 **on light duty after receiving word that a return to**  
11 **full duty was medically impossible," I do know that he**  
12 **based his decision and some of that verbiage in the**  
13 **letter based on personnel files and records that were**  
14 **provided by human resources, an analysis, if you will,**  
15 **of whether or not someone had been deemed permanently**  
16 **disabled and allowed to stay on for two years or more.**  
17 **So I think that might be where that line is coming**  
18 **from.**  
19 **Now, in terms of what he looked at on an**  
20 **individual basis, I don't know.**  
21 Q. Well, do you know what names were analyzed for  
22 the colonel, what troopers were analyzed?  
23 **A. There were a lot of them, sir, a lot of them.**  
24 **And I don't have the list and I would hate to**

45 (Pages 174 to 177)

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1 **speculate at this point.**  
2 Q. Right. I'm asking you specifically was Bruce  
3 Peachey one of them? And I think you're telling me  
4 you don't know if he was one of them?  
5 **A. I don't know if he was. I know he was provided**  
6 **a list of different medical histories when people were**  
7 **in and out of the workplace, but it would be unfair to**  
8 **speculate. I mean, without having that in front of**  
9 **me, I can't definitively say who was on it and who**  
10 **wasn't.**  
11 Q. And you don't know whether Major Forrester was  
12 on the list?  
13 **A. I do not.**  
14 Q. But if he was an observant police officer when  
15 he interacted with Major Forrester in Major  
16 Forrester's last years with the State Police, he had  
17 the opportunity to know that Major Forrester wore at  
18 least a hearing aid in one ear according to your best  
19 memory?  
20 **A. If he was wearing it, I would think he would**  
21 **see it based on his daily interaction or periodic**  
22 **interaction with the major.**  
23 Q. Right. Would you agree that Major Forrester  
24 had a permanent loss of hearing in his ear?

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1 **A. I don't know. He obviously had a loss. But**  
2 **permanent? I don't know. I don't know the extent of**  
3 **it. I really don't. I don't know if it was permanent**  
4 **or what. I don't know. I don't know how to determine**  
5 **that.**  
6 Q. Well, we're going to go into something you have  
7 said a little later.  
8 Haven't you been told by physicians that  
9 once you have a hearing loss it doesn't come back?  
10 **A. That's correct.**  
11 Q. By "permanent" that's what I meant.  
12 **A. Right.**  
13 Q. I don't want to mislead you.  
14 **A. Once it's lost, you don't get it back. That's**  
15 **what I understand.**  
16 Q. And I'm asking you because I think you told me  
17 earlier today that you have seen some medical records  
18 in the annual physical provided by Major Forrester's  
19 physician and he did check off some hearing issue,  
20 right?  
21 **A. Yes.**  
22 Q. And I'm asking you do you recall that it was  
23 indicated by his physician or the physician that he  
24 had hearing loss?

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1 **A. Yes.**  
2 Q. All right. If he had hearing loss, we can  
3 agree that that can't be recovered by natural means?  
4 **A. That's correct.**  
5 Q. And you could use a hearing aid to enhance your  
6 ability to hear, right?  
7 **A. Sure.**  
8 Q. So now I'm asking you the question as an HR  
9 person, would you agree that Major Forrester had a  
10 hearing loss that would not heal itself on its own?  
11 **A. Probably not.**  
12 Q. I'm sorry. I don't understand what you mean by  
13 "Probably not."  
14 Are you saying you do agree or you don't  
15 agree that he had a hearing loss?  
16 **A. I agree to the extent that the technology that**  
17 **we have or don't have now, probably not.**  
18 Q. By that you mean it won't grow back?  
19 **A. Right.**  
20 Q. Right. By that I think you're telling me that  
21 you agree that Major Forrester had a hearing loss that  
22 could only be rectified by using a hearing aid?  
23 **A. Apparently so, yes, sir.**  
24 Q. You're saying that from what you know of

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1 looking at his medical records as well as you have  
2 seen him wearing a hearing aid?  
3 **A. Right.**  
4 Q. Right. So we're still back on Yeomans Exhibit  
5 2 here, we're back to the third paragraph. Okay?  
6 **A. Okay.**  
7 Q. So we're back to the fourth line in the third  
8 paragraph. It's really the third full sentence that  
9 says, "I am not aware of any situation in which a  
10 trooper remained on light duty after receiving word  
11 that a return to full duty was medically impossible."  
12 Then he goes on and talks about it being  
13 irresponsible, you know, to keep you in there because  
14 your condition is permanent.  
15 You see all of that, right?  
16 **A. Right.**  
17 Q. Maybe we have already agreed on this. I don't  
18 know.  
19 Major Forrester had a permanent condition  
20 from which he would not recover?  
21 **A. It appears as though Major Forrester had**  
22 **hearing loss to the extent that he had to wear a**  
23 **hearing aid. I would imagine that was some permanent**  
24 **condition, yeah. Sure.**

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1 Q. And then we're on the second page of Yeomans  
2 Exhibit 2, that first full paragraph at the top and  
3 there I think the colonel is talking about the kinds  
4 of records that human resources did present to him,  
5 right?  
6 **A. Yes.**  
7 Q. And he's saying in each case of whatever was  
8 presented to him the medical evidence was inconclusive  
9 as to whether the trooper could return to full duty?  
10 **A. Right.**  
11 Q. Do you see that?  
12 **A. Yes.**  
13 Q. And I think you've indicated that Major  
14 Forrester was not one of the situations that was  
15 presented to the colonel?  
16 MR. FITZGERALD: Objection.  
17 **A. I don't know.**  
18 Q. I'm sorry. I don't want to misstate.  
19 You're not sure whether it was or not?  
20 **A. I don't know.**  
21 Q. How would we find out? Is there a list that we  
22 would have to ask you to produce?  
23 **A. Yes.**  
24 Q. Just for the sake of the record here, prior to

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1 May 11th, 2005 there was a list that indicates the  
2 documents that were reviewed for Colonel MacLeish that  
3 are mentioned here in the fourth paragraph of this  
4 letter, right?  
5 **A. Right.**  
6 MR. NEUBERGER: And just for the sake of  
7 the record, I'm going to send you a letter and ask if  
8 you would agree to produce that.  
9 MR. FITZGERALD: Okay. And just for the  
10 sake of the record, that list is going to be identical  
11 to either the first request for production of  
12 documents in this case or whatever list of comparators  
13 that were provided by plaintiffs.  
14 MR. NEUBERGER: Okay. So you think -- we  
15 will just look.  
16 MR. FITZGERALD: I don't know what he  
17 looked at either, but the list is going to be --  
18 unless Corporal Price identified people in the e-mail  
19 as referenced in this letter, which I don't think he  
20 did, but my guess is the list is the list of people  
21 you already have gone through in this deposition.  
22 MR. NEUBERGER: Okay. Okay.  
23 BY MR. NEUBERGER:  
24 Q. But there is a document out there?

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1 **A. Yes.**  
2 Q. So like was it a memo to him from you or your  
3 staff or was it a memo with an attachment? I mean,  
4 what are you saying here?  
5 **A. What I am saying is that we have a list of**  
6 **names in HR. He had consulted me on, you know, what**  
7 **he really wanted to know is is there someone on that**  
8 **list who was deemed permanently disabled but allowed**  
9 **to stick around for two years or more?**  
10 **The research in HR did not reveal that to**  
11 **be the case. I operated off of that list that was**  
12 **provided to me by my staff. I don't know that he**  
13 **actually ever came down and viewed the list or what he**  
14 **did outside of that, I don't know.**  
15 Q. Then there was a letter to Wayne Warren bearing  
16 the same date.  
17 MR. NEUBERGER: Let's mark that as Yeomans  
18 No. 3.  
19 (Yeomans Deposition Exhibit No. 3 was  
20 marked for identification.)  
21 BY MR. NEUBERGER:  
22 Q. Have you looked that one over?  
23 **A. Yes.**  
24 Q. Is this a similar letter directed to my client,

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1 Wayne Warren, on the same date?  
2 **A. Yes.**  
3 Q. And, once again, was my client told that by  
4 June 10th of 2005 he was going to have to sever his  
5 relationship with the Delaware State Police?  
6 **A. Yes.**  
7 MR. FITZGERALD: I will object to form.  
8 Q. He was going to have to retire or submit to a  
9 disability pension?  
10 **A. Yes.**  
11 Q. And the same thing. The colonel had the  
12 authority to make this decision, right?  
13 **A. Correct.**  
14 Q. And were his reasons for making this  
15 decision -- well, was one of his reasons the fact that  
16 he had received a report from Dr. Emmett again?  
17 **A. Yes.**  
18 Q. And a report from a Dr. Green?  
19 **A. Correct.**  
20 Q. So the fact of the receipt of those reports,  
21 was that one of the reasons why the colonel sent this  
22 letter?  
23 **A. Yes.**  
24 Q. And the second reason, was it the same as the

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1 one that you explained before about the policy was to  
2 keep you for two years unless you can't recover and he  
3 had his interpretation of the policy, the same reason  
4 you explained before?  
5 **A. Yes.**  
6 Q. And then I think is it fair to say that there  
7 were no other reasons other than the two that you have  
8 explained to me?  
9 **A. Right.**  
10 Q. Now, he talks in this one about the functional  
11 hearing requirements of a Delaware State trooper. Do  
12 you see that in the first paragraph? This is the  
13 fourth line down, the end going over to the fifth  
14 line.  
15 **A. Right.**  
16 Q. He's saying that based upon Dr. Emmett's  
17 opinion and that of Dr. Green "it is apparent that you  
18 have sustained hearing loss that does not allow you to  
19 meet the functional hearing requirements for the  
20 position of a Delaware State Trooper."  
21 Do you see that?  
22 **A. Yes.**  
23 Q. And he doesn't define what the functional  
24 hearing requirements are in there, does he?

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1 **A. No, he does not.**  
2 Q. In fact, in the letter to Kurt Price, Exhibit  
3 No. 2, he never talks about what the functional  
4 hearing requirements for a Delaware State Trooper are  
5 either, does he?  
6 **A. No.**  
7 Q. I think we early in the deposition today talked  
8 about some of the difficulties looking at the medical  
9 literature and the professional literature about  
10 defining hearing requirements to be a law enforcement  
11 officer, right?  
12 **A. Correct.**  
13 Q. So we did address some of the problems there,  
14 right?  
15 **A. Right.**  
16 Q. Did Colonel MacLeish tell you what he thought  
17 the functional hearing requirements for the position  
18 of a state trooper were when he wrote this letter?  
19 **A. No.**  
20 Q. Did he tell you whether or not he thought that  
21 a hearing aid would help Corporal Warren perform  
22 functional hearing requirements?  
23 **A. No, he did not.**  
24 Q. Did he tell you whether he thought a hearing

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1 aid would allow Corporal Price to perform functional  
2 hearing requirements?  
3 **A. No, he did not.**  
4 Q. Okay.  
5 MR. NEUBERGER: Well, I'll tell you what.  
6 Why don't we take our break? It's been almost an hour  
7 and 20 minutes.  
8 Why don't we take our break now? All  
9 right?  
10 MR. FITZGERALD: All right.  
11 (A brief recess was taken.)  
12 MR. NEUBERGER: Let's try to move on.  
13 Let's mark this as Exhibit 4 here.  
14 (Yeomans Deposition Exhibit No. 4 was  
15 marked for identification.)  
16 BY MR. NEUBERGER:  
17 Q. Have you looked at it?  
18 **A. Yes.**  
19 Q. Now, these are documents that were produced by  
20 the lawyers for the State Police in discovery in this  
21 case. Okay?  
22 **A. Okay.**  
23 Q. So I'm really focusing on the first page of  
24 this document that at the bottom says D2508.

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1 Do you see that?  
2 **A. Yes.**  
3 Q. Okay. And counting up from the bottom, we go  
4 one, two, three, four, five, the sixth line up says,  
5 "Thanks, JY."  
6 Do you see that?  
7 **A. Yes.**  
8 Q. And JY is you, right?  
9 **A. Right.**  
10 Q. And then we move up the page there to where it  
11 says, "Original Message" about in the middle of the  
12 page.  
13 Do you see that?  
14 **A. Mm-hmm.**  
15 Q. It says from John Yeomans, right?  
16 **A. Yes.**  
17 Q. And then so from there down is an e-mail  
18 message that you sent on June 18, 2004. Is that  
19 correct?  
20 **A. That's correct.**  
21 Q. Okay. Then if my memory serves me right,  
22 that's about the week before the colonel sent his  
23 letter that was Baylor Deposition Exhibit 1 and 2, the  
24 letter putting my clients on light-duty status.

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1 Do you remember that?  
2 **A. Yeah.**  
3 Q. So we're a week before that letter was sent  
4 putting them on light-duty status as a context. It  
5 was a June 25th letter.  
6 **A. Okay.**  
7 Q. So is this an e-mail to a Robert Williams?  
8 **A. Yes.**  
9 Q. And Robert Williams is the director of  
10 audiology at something called the T K Group, Inc.,  
11 right?  
12 **A. Right.**  
13 Q. And they're located in what state?  
14 **A. Illinois.**  
15 Q. In Illinois?  
16 **A. Right.**  
17 Q. So is he an audiologist? I mentioned that word  
18 this morning.  
19 **A. I believe he is.**  
20 Q. Okay. So on June 18th you send this e-mail  
21 to --  
22 **A. He's the director of audiology anyway.**  
23 Q. Right. And they do audiology testing, right?  
24 **A. Right.**

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1 Q. So you sent him this three-paragraph letter,  
2 right?  
3 **A. Right.**  
4 Q. And just so if there's any problem with  
5 deciphering it, could you just read these three  
6 paragraphs into the record?  
7 **A. Starting with "Dr. Williams"?**  
8 Q. Yes, please.  
9 **A. "Dr. Williams: As an FYI Dr. Green conducted a**  
10 **fitness for duty examination relative to officers'**  
11 **Warren and Price hearing capabilities. He has**  
12 **determined they are not fit for duty.**  
13 **"As such we will place them on a light**  
14 **duty status. Our policy is that we can only keep**  
15 **officers in light duty capacity for two years before**  
16 **they must separate from the agency and apply for a**  
17 **disability pension.**  
18 **"Would it be safe to say this type of**  
19 **hearing loss is irreparable?**  
20 **"Thanks, JY."**  
21 Q. And then Robert Williams responded at the top  
22 of this page to your e-mail, right?  
23 **A. Yes.**  
24 Q. And that's what's found at the top of the page?

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1 **A. Correct.**  
2 Q. And let me see if I can read it to you. That  
3 same day he responded, June 18th?  
4 **A. Yes.**  
5 Q. And did he say, quote, Captain, thanks for the  
6 information; Most losses are irreversible unless  
7 mechanically induced, i.e. middle ear conduction  
8 aphthology which may be medically correctable, signed  
9 RW, close quote?  
10 Do you see that?  
11 **A. That's correct.**  
12 Q. So he responded to your request about this type  
13 of hearing loss being irreparable, right?  
14 **A. Right.**  
15 Q. And he told you that this type of hearing loss  
16 is irreparable, right?  
17 **A. That's what he's saying, yes, sir.**  
18 Q. Right. And now your three-paragraph e-mail to  
19 him, this wasn't sent by accident or anything, was it?  
20 **A. Oh, no.**  
21 Q. Right. This was a deliberate e-mail from you?  
22 **A. Absolutely. Right.**  
23 Q. This was sent and the things you said in the  
24 e-mail were correct, right?

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1 **A. Yes.**  
2 Q. So, for example, you talked about that there is  
3 a light-duty status in the Delaware State Police?  
4 **A. Right.**  
5 Q. Do you see that?  
6 **A. Right.**  
7 Q. You made reference to that in the second  
8 paragraph, right?  
9 **A. Right.**  
10 Q. And we have made various references to light  
11 duty throughout the deposition today, right?  
12 **A. Right.**  
13 Q. You've understood those references to be  
14 referring to the light-duty status found in the  
15 Delaware State Police. Is that right?  
16 **A. Yes.**  
17 Q. And then we're still in the second paragraph.  
18 The second sentence you indicate "Our policy."  
19 Do you see that?  
20 **A. Yes.**  
21 Q. And that's talking about the light-duty policy  
22 of the Delaware State Police?  
23 **A. Yes.**  
24 Q. And you indicate that "Our policy is that we



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1 can only keep officers in a light duty capacity for  
2 two years before they must separate from the agency  
3 and apply for a disability pension." Is that correct?  
4 **A. Correct.**  
5 Q. And you were told in response that the hearing  
6 loss my clients had suffered was irreparable, right?  
7 **A. Yes.**  
8 Q. And we looked at this. This was Yeomans  
9 Exhibit No. 2 and 3.  
10 They were the letters dated May 11, 2005  
11 from the colonel to my clients, right?  
12 **A. Right.**  
13 Q. That's where they were told they were going to  
14 have to be retiring prior to two years, right?  
15 **A. Right.**  
16 Q. And they were told by the colonel there that  
17 because their conditions were permanent they were  
18 going to have to retire, right?  
19 **A. Right.**  
20 Q. Now, those statements that they were going to  
21 have to retire because they have permanent conditions  
22 is contrary to what you were saying to Mr. Williams in  
23 this sentence about your policy. Isn't that correct?  
24 **A. How's it contrary?**

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1 Q. Well, the policy says that people are put on  
2 light-duty status for two years even if they're  
3 irreparable and that's what you were asking him.  
4 MR. FITZGERALD: I object to form and  
5 foundation.  
6 **A. Yeah, I mean that's what I stated.**  
7 **What I didn't state was that if they were**  
8 **permanently disabled that they shouldn't stay beyond**  
9 **two years, so we can only carry them for so long. I**  
10 **mean, I didn't state that and I wouldn't expect him to**  
11 **infer that, but I could see where the discrepancy**  
12 **would lie.**  
13 Q. Right. So you admit that there's a discrepancy  
14 in what you said on June 18th in this e-mail and what  
15 Colonel MacLeish is saying in Yeomans Exhibit 2, in  
16 Exhibit 2, right?  
17 MR. FITZGERALD: I object to form.  
18 **A. Just point it out to me.**  
19 Q. Sure. At the bottom here where it says, start  
20 with "I am not aware" through the bottom (indicating).  
21 **A. (Reviewing document) .**  
22 MR. FITZGERALD: For the record, what did  
23 you point out to him?  
24 MR. NEUBERGER: The third paragraph, the

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1 middle to the end.  
2 MR. FITZGERALD: The entire paragraph or  
3 the -- the middle to the end?  
4 MR. NEUBERGER: Yes.  
5 **A. I mean, side by side, yeah, it's a discrepancy.**  
6 **But I guess the inference, and he wouldn't know that,**  
7 **was that if they were disabled, permanently disabled**  
8 **that they couldn't remain for two years I guess is**  
9 **what I was suggesting based on how I interpreted the**  
10 **policy.**  
11 **Now, I didn't put that in here, but I**  
12 **could see where the discrepancy occurred.**  
13 Q. Right. You're saying the words you chose to  
14 communicate --  
15 **A. Weren't the best.**  
16 Q. Right. You're saying in hindsight --  
17 **A. In retrospect, I probably could have worded it**  
18 **differently.**  
19 Q. You're saying in hindsight you wish you would  
20 have worded this e-mail differently?  
21 **A. And then --**  
22 Q. Yes or no? In hindsight, you wish you would  
23 have worded this e-mail differently?  
24 **A. Yes.**

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1 **Can I expound?**  
2 Q. Sure. Go ahead.  
3 **A. I guess in my e-mail to him though I put that**  
4 **in relative to our policy, but what I am mainly**  
5 **interested in from this guy was was it irreversible or**  
6 **what was the case? You know, he's supposedly the guru**  
7 **of audiology and that's really the intent of the**  
8 **e-mail.**  
9 **Do you follow me?**  
10 Q. I understand what you're saying, right.  
11 My question to you is: Do you agree with  
12 your statement in this paragraph that the policy of  
13 the Delaware State Police is that it can only keep  
14 officers in a light-duty capacity for two years before  
15 they must separate?  
16 **A. If they're permanently disabled.**  
17 Q. Right. Right. We understand, we understand --  
18 let's just go back a second.  
19 **A. Okay.**  
20 Q. You have heard the phrase in your line of work  
21 temporary total disability and permanent total  
22 disability, right?  
23 **A. Right.**  
24 Q. I think you were just saying if a person is

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1 totally disabled we can only keep them for two years.  
2 Is that what you just said?  
3 **A. Up to two years. We can carry someone on light**  
4 **duty up to two years unless they're able to return to**  
5 **full-duty status, and that's probably the way I should**  
6 **have worded it to him, but I didn't.**  
7 Q. Right. Okay.  
8 **A. Because that wasn't really my interest with**  
9 **him. I mean, I put that in there, but what I really**  
10 **wanted to know from this guy, as I wanted to know from**  
11 **all of these doctors with respect to these gentlemen,**  
12 **was whether or not they had a hearing loss, if it was**  
13 **disabling to the point that they could not be Delaware**  
14 **State Troopers and, most importantly, would they ever**  
15 **be able to be Delaware State troopers?**  
16 **That's what I was interested in.**  
17 Q. Would you agree that the policy of the Delaware  
18 State Police concerning light-duty status is not  
19 written down anywhere?  
20 **A. It's fragmented. It's not that we have a clear**  
21 **light-duty policy. It's broken up in bits and pieces**  
22 **between the workmen's comp policy and/or modified, I**  
23 **think it's referred to as the modified leave policy,**  
24 **sick leave policy. There's reference to a two-year**

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1 **window, the ability of the division to seek**  
2 **independent medical exams and things like that.**  
3 **So you're correct. I don't know that it's**  
4 **really laid out the way it should be.**  
5 Q. And that is my understanding. Okay?  
6 **A. Okay.**  
7 Q. So let's talk about what is laid out. We're  
8 going to turn to an exhibit now because I think this  
9 does lead us into that. Okay?  
10 **A. Sure.**  
11 Q. So let me put these away here.  
12 MR. NEUBERGER: Robert, I think you might  
13 have brought it with you. Did you bring Baylor  
14 Exhibit No. 7 with you? If you can put that in front  
15 of him.  
16 MR. FITZGERALD: Okay. I got it.  
17 MR. NEUBERGER: Could we put it in front  
18 of the witness?  
19 MR. FITZGERALD: Okay.  
20 BY MR. NEUBERGER:  
21 Q. Now, what's marked as Baylor Exhibit No. 7 is a  
22 document that I believe at the deposition of retired  
23 Major Baylor was identified by counsel for the  
24 Delaware State Police and a lot of questions were

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1 asked about it. Okay?  
2 **A. Okay.**  
3 Q. So you have seen this before?  
4 **A. Yes.**  
5 Q. And this is the current statement of section  
6 III, pages 634 through 645 of the Delaware State  
7 Police manual, right, operations manual?  
8 **A. It's III-6-34 through III-6-41 of the**  
9 **administrative manual.**  
10 Q. Okay. I identified too many pages. Okay.  
11 So it's III-6-41 which you have?  
12 **A. Right.**  
13 Q. Now we're going back. I was just asking you  
14 whether there's a section in the administrative manual  
15 called light-duty status and it's got a long  
16 several-page definition of light-duty status.  
17 **A. We don't have that.**  
18 Q. Right. Instead we do have whatever is found  
19 here on Baylor Deposition Exhibit 7 which addresses  
20 various issues, right?  
21 **A. Yes.**  
22 Q. And so before we go into that in some detail,  
23 let's see if we can agree on a few things.  
24 Because the Delaware State Police does not

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1 have in the administrative manual a written section on  
2 light-duty status, the Delaware State Police has to  
3 depend on its experience in administering its policies  
4 in that regard?  
5 **A. Correct.**  
6 Q. Right?  
7 **A. Right.**  
8 Q. I mean, there's you in HR that have familiarity  
9 with it, right?  
10 **A. Right.**  
11 Q. There would be your predecessors in HR who have  
12 familiarity with it, right?  
13 **A. Right.**  
14 Q. Troop commanders would have familiarity with  
15 it?  
16 **A. Some, yes.**  
17 Q. The members of the administrative staff would  
18 have familiarity with it?  
19 **A. Yes.**  
20 Q. We agree because we have used it all day today  
21 there is something called light-duty status?  
22 **A. Correct.**  
23 Q. The people who administer it have experience  
24 with it, right?

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1 **A. Yes.**  
2 Q. There would be precedence or situations in the  
3 past that have arisen under light duty that the people  
4 administering would have experience with, right?  
5 **A. Correct.**  
6 Q. Let me ask you this: Is it a policy or is it  
7 just a practice of the State Police? Is it something  
8 in between? Is it a custom of the State Police, light  
9 duty? What is it?  
10 **A. It's practice, it's custom and it's weakly**  
11 **interwoven into some other policies.**  
12 Q. Is it fair to say that in trying to identify  
13 what the light duty practice, policy and custom is we  
14 have to look at a lot of sources?  
15 **A. Correct. Right.**  
16 Q. So now let's look at what we can find in this  
17 Baylor Exhibit No. 7.  
18 **A. Okay.**  
19 Q. Okay. Let me just write myself a note.  
20 All right. Here on the first page of  
21 Baylor Exhibit No. 7, page III-6-34 at the top there's  
22 something called a policy statement.  
23 Do you see that?  
24 **A. Yes.**

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1 Q. In the first sentence there do you see where it  
2 says, "It is the policy of the Delaware State Police  
3 to provide reasonable accommodation to allow an  
4 injured or ill employee to retain salary or benefits"?  
5 **A. Yes.**  
6 Q. You told me earlier the Delaware State Police  
7 is a paramilitary organization, right?  
8 **A. Right.**  
9 Q. Isn't it fair to say that there's a great  
10 degree of loyalty and esprit de corps among the  
11 different members of the State Police?  
12 **MR. FITZGERALD: I object to form and**  
13 **foundation.**  
14 Q. Based on your experience?  
15 **A. Yes.**  
16 Q. Is it fair to say that the Delaware State  
17 Police care about each other?  
18 **A. Yes.**  
19 Q. Is it fair to say that if a member of the  
20 Delaware State Police has a tragedy such as Trooper  
21 Armistad, serious, debilitating, traumatic head  
22 injuries, people would come forward and donate sick  
23 leave, right?  
24 **A. They step up to it, yeah, definitely. Yeah.**

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1 Q. Right. When tragedies happen and troopers are  
2 killed in the line of duty --  
3 **A. Absolutely.**  
4 Q. -- everybody rises to the occasion to help the  
5 family and everything?  
6 **A. Without question.**  
7 Q. And is it fair to say that when a trooper is  
8 injured on the job, let's just talk about on the job,  
9 that the Delaware State Police wants to make  
10 reasonable accommodations so they can keep getting  
11 salary and benefits?  
12 **A. Right. Yes.**  
13 Q. There might have to be certain limits to that,  
14 right?  
15 **A. Of course. Yes.**  
16 Q. For budget or other reasons?  
17 **A. Right.**  
18 Q. Right?  
19 **A. Right.**  
20 Q. But troopers have families and management  
21 understands that, right?  
22 **A. Right.**  
23 Q. Troopers have expectations about their income?  
24 **A. Yes.**

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1 Q. Right?  
2 **A. Yes.**  
3 Q. Troopers make plans about how they're going to  
4 send their kids to college and things like that,  
5 right?  
6 **A. Yes.**  
7 Q. And when a trooper has a health or other  
8 injury, the Delaware State Police historically has  
9 tried to provide a floor of income and benefits to  
10 them as best it could. Is that a fair statement?  
11 **A. Yes.**  
12 Q. And the first sentence here that I have been  
13 referring to, the context, that's the historical  
14 context for this statement found in the first sentence  
15 here. Is that fair?  
16 **A. Yes.**  
17 **MR. FITZGERALD: I object to foundation.**  
18 Q. Yes?  
19 **A. Correct.**  
20 Q. Then the second sentence tries to give some  
21 content to it and it's indicating that reasonable  
22 accommodation may be in the form of worker's  
23 compensation benefits --  
24 **A. Right.**

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1 Q. -- sick leave or other accrued leave, permanent  
2 or temporary reassignment or job restructuring or a  
3 combination of these functions. Is that right?  
4 **A. Right.**  
5 Q. So there's three categories of things that are  
6 mentioned here. It talked about worker's comp. as a  
7 category, right?  
8 **A. Right.**  
9 Q. It talked about sick or other accrued leave as  
10 a category?  
11 **A. Right.**  
12 Q. And it talked about job restructuring and even  
13 reassignments as another category?  
14 **A. Right.**  
15 Q. And it also talked about trying to make up a  
16 mix of these three different categories, right?  
17 **A. Right.**  
18 Q. And that would all be towards the goal of  
19 helping a trooper retain that floor of salary and  
20 benefits, right?  
21 **A. Sure. Yes.**  
22 Q. I mean, you're the HR person. You have been  
23 there many years and you understand that as a policy  
24 of the State Police, right?

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1 **A. Correct.**  
2 Q. And while you're trying to retain salary and  
3 benefits, is it fair to say that this policy statement  
4 here is trying to find ways to keep a trooper on the  
5 active payroll?  
6 **A. Yes.**  
7 Q. Then there's another policy statement here.  
8 There's a second paragraph in this policy statement.  
9 Do you see that?  
10 **A. Yes.**  
11 Q. Have you read that over?  
12 **A. Yes.**  
13 Q. Now, does this indicate that when an illness or  
14 injury occurs or it becomes permanent -- do you see  
15 that?  
16 **A. Yes.**  
17 Q. And the employee is unable to perform essential  
18 job functions. Do you see that?  
19 **A. Yes.**  
20 Q. Then the policies on pension or separations  
21 apply, right?  
22 **A. Yes.**  
23 Q. Now, this is talking about, shall we say this  
24 paragraph is talking about two conditions. Would you

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1 agree?  
2 **A. Sure.**  
3 Q. The first condition is if you're ill, be it  
4 temporary or whatever or permanent, if you're ill?  
5 That's a condition, right?  
6 **A. Right.**  
7 Q. And let's call it temporary or permanent. If  
8 you're temporarily disabled or permanently disabled,  
9 it's talking about that, right?  
10 **A. Right.**  
11 Q. Then it goes on and talks about a second  
12 condition, unable to perform essential job functions.  
13 Do you see that?  
14 **A. Yes.**  
15 Q. Now, this policy here is talking about when an  
16 employee is ill or disabled looking at ability to  
17 perform essential job functions. Is that correct?  
18 **A. Right.**  
19 Q. Now, essential job functions, is it a fair  
20 statement that there's some discretion on the part of  
21 the State Police in how it defines the essential job  
22 functions for a trooper?  
23 **MR. FITZGERALD: Objection to foundation.**  
24 Q. Once again, you're the personnel director.

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1 There's not going to be anybody besides you who is  
2 better equipped --  
3 **MR. FITZGERALD: At determining the**  
4 **essential job functions of the Delaware State Police?**  
5 **MR. NEUBERGER: Who would be able to**  
6 **address essential job functions of the Delaware State**  
7 **Police, yes, I agree with that statement.**  
8 **MR. FITZGERALD: Okay. I object to**  
9 **foundation.**  
10 **BY MR. NEUBERGER:**  
11 Q. Do you think as the personnel director of the  
12 Delaware State Police you are qualified to address  
13 what it takes to be a law enforcement officer in the  
14 Delaware State Police?  
15 **A. Medically? Psychologically? I mean are you --**  
16 Q. No. The kind of things that a cop has to do.  
17 **A. Yeah. I think I can pretty much state what**  
18 **they are.**  
19 Q. For example, if I asked you what an officer  
20 assigned to the video lottery enforcement unit does,  
21 you would be able to describe what that officer does,  
22 right?  
23 **A. Pretty much, yeah.**  
24 Q. There are desk, there are people at the various

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1 troops who answer the phones and work with the radio  
2 people, right?  
3 **A. Yes.**  
4 Q. We have had testimony about that.  
5 **A. Right.**  
6 Q. You know the kinds of things that those people  
7 do?  
8 **A. Yes.**  
9 Q. We talked about a trooper earlier on who in his  
10 career worked as a supply officer?  
11 **A. Yes.**  
12 Q. When that was still a uniformed position, you  
13 would have known what they do, right?  
14 **A. Right. Right.**  
15 Q. There are Major Baylor probably identified for  
16 us thirty or more positions in the Delaware State  
17 Police other than road trooper that corporals or  
18 people below the rank of corporal can perform.  
19 Would you agree there are many positions  
20 in the State Police other than road trooper?  
21 **A. Absolutely.**  
22 Q. Absolutely?  
23 **A. Yeah.**  
24 Q. And for those various positions you would be

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1 able to identify what the job requires, right?  
2 **A. Pretty much.**  
3 Q. Because you work in HR?  
4 **A. Right.**  
5 Q. So if a person is working at the desk at a  
6 troop handling the incoming calls and everything,  
7 you're aware of the kinds of duties they perform,  
8 right?  
9 **A. Yes.**  
10 Q. You know they're not out there making arrests  
11 on the street?  
12 **A. Correct.**  
13 Q. You know they're not out there engaging in  
14 crowd control, right?  
15 **A. Right.**  
16 Q. You know they're not on the SWAT team breaking  
17 down doors?  
18 **A. Right.**  
19 Q. Right?  
20 **A. Right.**  
21 Q. Okay. Now, these two paragraphs here we have  
22 been looking at, looking at the second paragraph,  
23 "unable to perform essential job functions," do you  
24 see that?

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1 **A. Yes.**  
2 Q. And then at the end of the first paragraph it  
3 talked about job restructuring.  
4 Do you see that?  
5 **A. Right.**  
6 Q. If a trooper -- let's just take a trooper who  
7 let's just say has a bad knee. We talked about some  
8 of them today or even a shattered foot. Okay?  
9 **A. Right.**  
10 Q. That kind of a trooper may not be able to chase  
11 down a suspect?  
12 **A. Right.**  
13 Q. He's not going to be as agile as another  
14 trooper, right?  
15 **A. Mm-hmm.**  
16 Q. If he had been injured on the job, that kind of  
17 a trooper could have his job restructured and he could  
18 be put in a different position temporarily. Isn't  
19 that correct?  
20 **A. Temporarily, correct.**  
21 Q. Right. I'm not talking for the rest of his  
22 career.  
23 **A. Right.**  
24 Q. But a trooper who can't chase down a suspect

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1 could temporarily be put in a different job, right?  
2 **A. Sure.**  
3 Q. We might call that job restructuring or maybe  
4 we could even call that temporary reassignment.  
5 Do you see that in the first paragraph  
6 there?  
7 **A. Sure.**  
8 Q. We talked today about a trooper who had some  
9 sort of problem, a female trooper who was put into HR  
10 for I think two years?  
11 **A. Okay.**  
12 Q. Do you remember that?  
13 **A. Yeah.**  
14 Q. So that person might have been a patrol officer  
15 before but all of a sudden they had a desk job for two  
16 years?  
17 **A. Okay.**  
18 Q. That kind of temporary reassignment could be  
19 allowed, right?  
20 **A. Right.**  
21 Q. Now, if that trooper is not able to run down a  
22 suspect, to try to maintain that trooper on the active  
23 payroll wasn't that trooper's job functions being  
24 altered? Wasn't that trooper being put into HR?

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1 MR. FITZGERALD: I object to form.  
2 **A. Their functions were being altered, sure, their**  
3 **day-to-day functions and duties were altered.**  
4 Q. Right. Right. So are we saying that  
5 historically within the State Police when we're trying  
6 to maintain this goal of letting troopers remain on  
7 the active payroll for a period of time that  
8 historically troopers have been reassigned to  
9 different jobs?  
10 **A. Absolutely. Sure.**  
11 Q. Absolutely. There's no dispute about that,  
12 right?  
13 **A. No.**  
14 Q. And isn't it true that the essential job  
15 functions of that particular trooper have changed when  
16 they get reassigned?  
17 **A. Yeah. Sure. For that assignment, sure.**  
18 Q. Let's just take a trooper who has been on  
19 patrol who then would be moved into HR.  
20 **A. Right.**  
21 Q. Let's go back. I understand there's a lot of  
22 paperwork that HR does? Yes?  
23 **A. Oh, yeah.**  
24 Q. So let's take a trooper on patrol who is making

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1 arrests and directing traffic and doing all the things  
2 you do on patrol and we put that trooper into HR.  
3 That trooper is not going to be making arrests  
4 anymore, is he or she, in HR?  
5 **A. Well, they could be. You're not talking about**  
6 **a reassignment as a result of -- you're not talking**  
7 **about a light-duty assignment? You're talking**  
8 **about --**  
9 Q. I'm trying to talk about light duty. Right now  
10 let's just assume we're saying we're putting him or  
11 her into HR.  
12 **A. As a light-duty assignment?**  
13 Q. As a light-duty assignment.  
14 **A. No, we don't want them out running down felons**  
15 **or anything else, engaging in physical confrontations**  
16 **that might exacerbate their condition, you're right.**  
17 Q. You brought up about light duty and maybe  
18 here's where we're talking about the interaction of  
19 some of these written policies with the historic  
20 practice of the Delaware State Police. Okay?  
21 **A. Okay.**  
22 Q. Do you find that that kind of an assignment for  
23 light duty for somebody would be consistent with the  
24 policy statement that is here in the first two

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1 paragraphs we have been talking about?  
2 **A. Sure.**  
3 Q. Right. And then there's always this reference  
4 to the two years.  
5 **A. Right.**  
6 Q. We have heard up to two years, over a year.  
7 Okay?  
8 **A. Right.**  
9 Q. There's bits and pieces of that found in this  
10 written policy statement found here in Baylor Exhibit  
11 7. Is that correct?  
12 **A. Yes.**  
13 Q. So, for example, if we looked at the second  
14 page here, F down here (indicating), they talk  
15 about -- and this is when you're talking about  
16 combining worker's comp. with other kinds of benefits.  
17 Do you see that?  
18 **A. Yes.**  
19 Q. When we're combining these things so that we  
20 can keep the people up to their old pay level, right?  
21 **A. Right.**  
22 Q. And it talks about the discretion of the  
23 superintendent a one-year period and then the  
24 possibility of two six-month periods after that?

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1 **A. Right.**  
2 Q. But then it says after that it's got to end,  
3 right?  
4 **A. Yes.**  
5 Q. And there are other references found in this  
6 document to that kind of thing, right?  
7 **A. Even under the sick leave policy III-6-36**  
8 **section C.**  
9 Q. But the point is the superintendent does have  
10 under these written policies some discretion to extend  
11 things but only so far, right?  
12 **A. Right. Okay.**  
13 MR. NEUBERGER: I think we're going to move  
14 off of that. Let's just check here, Robert.  
15 I think let me just take a break and then  
16 I think there's just a few little housekeeping kind of  
17 things. All right?  
18 THE WITNESS: All right.  
19 MR. NEUBERGER: Let's just take a break,  
20 guys.  
21 (A brief recess was taken.) **A - 445**  
22 BY MR. NEUBERGER:  
23 Q. I talked a little bit earlier about the letter  
24 indicating when, the first letter from the colonel

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1 indicating when my clients had to separate. Okay?  
2 You're aware that he extended that one  
3 time? Do you know that?  
4 **A. I am, yes. Right.**  
5 Q. Right now it's in something called a suspended  
6 status or something like that.  
7 Are you aware of that?  
8 **A. Yeah. I'm aware of that now too.**  
9 Q. Do you have any idea when or whatever that he's  
10 going to make another decision on suspended status?  
11 **A. I have no idea, sir.**  
12 Q. That's not your bailiwick?  
13 **A. No.**  
14 Q. No.  
15 MR. NEUBERGER: Well, let's just mark this  
16 as the next exhibit.  
17 Robert, this is your e-mail to me. I'm  
18 sorry. It's Ed's e-mail to me.  
19 (Yeomans Deposition Exhibit No. 5 was  
20 marked for identification.)  
21 BY MR. NEUBERGER:  
22 Q. Have you seen that before?  
23 **A. No, I have not.**  
24 Q. That takes care of that.

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1 You have had various meetings probably  
2 with my clients over the past year or so about their  
3 status. Is that correct?  
4 **A. Sure.**  
5 Q. So there may be some things that I'm just going  
6 to ask you about those meetings.  
7 **A. Okay.**  
8 Q. If you remember. Okay?  
9 **A. Okay.**  
10 Q. Do you remember whether you had a meeting with  
11 Corporal Price around April of 2004 in your office and  
12 talked about a pension application for him, maybe a 30  
13 or 40 percent pension, and whether a discussion came  
14 back about his going back on the road as a patrol  
15 trooper?  
16 **A. I recall that.**  
17 Q. What do you remember about that?  
18 **A. I think we were just talking about what the**  
19 **possibilities were if Kurt was deemed disabled and**  
20 **would have to separate from the division what he might**  
21 **be looking at percentage-wise from the pension office.**  
22 **And I think where that number comes from was probably**  
23 **worst case scenario or if it could be demonstrated**  
24 **that it was a full disability duty-connected it might**

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1 go as high as 75 percent with 10 percent for each  
2 dependent child is my understanding of the disability  
3 pension plan for someone with his years of service and  
4 the plan that he would fall under.  
5 We talked about that because I mean  
6 obviously I know he was concerned about what it meant  
7 for him and his future and his family's future. So I  
8 know we talked about, you know, what are we looking at  
9 here?  
10 The other thing was if he was going to  
11 be -- the only thing I can possibly recall about the  
12 road assignment would be if he were deemed fit for  
13 duty if he would be looking at going back to the road.  
14 I don't know.  
15 Q. So that was something you said was a  
16 possibility?  
17 **A. Sure. It always is.**  
18 Q. This is the exams that -- first of all, the  
19 State Police, I think we have mentioned it this  
20 morning, initiated hearing exams of my clients, Kurt  
21 Price and Wayne Warren, right?  
22 **A. (Pause).**  
23 Q. Let me go back.  
24 It wasn't an annual medical report on

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1 their fitness by Kurt's family physician or Wayne's  
2 family physician which led to the hearing exams, was  
3 it?  
4 **A. No, it was not.**  
5 Q. The State Police chose to send them for hearing  
6 exams. Is that correct?  
7 **A. As part of a complete medical workup, yes.**  
8 Q. Yes.  
9 **A. Right.**  
10 Q. Let's fast forward to January of 2005, the end  
11 of the month, around the 27th of January.  
12 Do you remember my clients being concerned  
13 about getting bills from the University of  
14 Pennsylvania that should have been sent to the State  
15 Police for medical exams they were required to  
16 undergo?  
17 **A. I do recall that, yes.**  
18 Q. Did you have a meeting with Wayne Warren and  
19 Lynn Price in your offices at the end of January 2005  
20 to talk about that issue?  
21 Do you remember that?  
22 **A. I don't know if it was Wayne and Lynn together.**  
23 **I mean, I know they both had a concern about it. I**  
24 **know I had talked to Kurt about it on the phone.**

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1 **Frankly, I was extremely disappointed that**  
2 **they had gotten the bills because they shouldn't have**  
3 **gotten the bills. The State Police should have gotten**  
4 **the bills, but for whatever reason they got sent to**  
5 **these troopers. So I mean we were trying to rectify**  
6 **it as best as we could with the University of**  
7 **Pennsylvania billing department.**  
8 Q. And do you remember anything else about the  
9 conversations that day?  
10 **A. No, other than if it's the one I'm thinking of,**  
11 **I was just trying to instill in them that I would do**  
12 **everything I could to get it changed because it not**  
13 **only happened once, I think it happened a couple of**  
14 **times.**  
15 Q. I think I misspoke. I think Kurt Price was  
16 present at the meeting too. It would have been the  
17 three of them.  
18 Does that ring a bell?  
19 **A. Yeah. That sounds about right, yeah.**  
20 Q. Was there any discussion that day about the  
21 fact that the colonel could be forcing, could order  
22 them to be separated at any time, if you remember?  
23 **A. I don't recall it, but I'm not saying it didn't**  
24 **happen.**

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1 Q. So it could have happened?  
2 **A. Sure.**  
3 Q. But you just don't remember one way or the  
4 other right now?  
5 **A. No.**  
6 Q. Now, this is a March meeting, March 3rd, 2005,  
7 around 11:30 and it's about the bill again. Okay? It  
8 might set some context. But it's a meeting in your  
9 office with you and Kurt Price. Okay?  
10 And do you remember if there was a  
11 discussion about then Lieutenant Colonel MacLeish  
12 supporting Kurt's disability pension request and an  
13 indication by you that the colonel was not interested  
14 in keeping him on light duty for two years?  
15 Does that ring any bells?  
16 **A. I don't remember the exact verbiage in a**  
17 **conversation, but we probably did talk about that,**  
18 **yeah. Sure.**  
19 Q. Do you remember anything else that you might  
20 have said that day?  
21 **A. No. Not specifically, no.**  
22 MR. NEUBERGER: We're done. I don't have  
23 any other questions. Your turn.  
24 And from my point of view, we will recess

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1 the deposition, as I indicated earlier, subject to  
2 maybe some re-call about documents, if necessary.  
3 MR. FITZGERALD: About documents? Yes.  
4 MR. NEUBERGER: Yes.  
5 BY MR. FITZGERALD:  
6 Q. Captain Yeomans, you were asked earlier about  
7 testimony you had given in the Bullen v. Chaffinch  
8 case a couple of years ago, I think, and there was  
9 some testimony about retesting of recruits.  
10 Do you remember that?  
11 **A. Yes.**  
12 Q. Can you tell me how many recruits got a second  
13 test physical exam?  
14 **A. I know that there were a number of them that**  
15 **were invited back to take the test, but I think only a**  
16 **handful of them actually took the opportunity to**  
17 **retest and I want to say it might have been half a**  
18 **dozen.**  
19 Q. Do you know how many of those who took that  
20 opportunity passed the test?  
21 **A. Probably three or four.**  
22 Q. And of those three or four, do you know how  
23 many got through the entire process and became  
24 Delaware State troopers?

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1 **A. Well, the applicant in question for which**  
2 **Colonel Chaffinch inquired about he got hired and then**  
3 **there was another applicant that -- because following**  
4 **the P.T. test they still have to go through polygraph,**  
5 **background and everything else.**  
6 Q. Right.  
7 **A. So there was another one that actually went all**  
8 **the way through and got hired.**  
9 Q. So two out of the six got through the process,  
10 were able or took advantage of the second test, got  
11 through that, passed the remaining elements of the  
12 recruiting process and became Delaware State troopers?  
13 **A. Correct.**  
14 Q. Are they still with the Delaware State Police?  
15 **A. Yes.**  
16 Q. At any time in conversations that you have had  
17 with now Colonel MacLeish or Colonel Chaffinch  
18 regarding the plaintiffs or the FTU, have they  
19 indicated anything to you other than that their goal  
20 was to take care of the plaintiffs and fix the  
21 firearms training unit?  
22 **A. Anything other than that?**  
23 Q. Yes.  
24 **A. No.**

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1 Q. You testified earlier about the broad standard  
2 used by the Delaware State Police for hearing and you  
3 used the phrase normal hearing.  
4 Do you know what standards Dr. Green used  
5 when he evaluated plaintiffs?  
6 **A. No.**  
7 Q. Do you know where he got -- do you know whether  
8 or not he had a standard?  
9 **A. He has decibel levels, and he could explain it**  
10 **best as he's a doctor, that he looks at in terms of**  
11 **what he would deem normal hearing or what would be**  
12 **required for a police officer to effectively**  
13 **communicate.**  
14 Q. You were asked a question earlier about  
15 testimony that John Dillman would give if he was going  
16 to give testimony that the State Police does not have  
17 a requirement for hearing for current troopers because  
18 that could decimate the personnel.  
19 Do you remember that question?  
20 **A. Right.**  
21 Q. Do you know anything about a policy formed by  
22 John Dillman or anybody else about not adopting a  
23 hearing standard because it would kick out too many  
24 people?

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1 **A. No.**  
2 Q. You were asked some questions about certain  
3 troopers who were either on light-duty status or  
4 suspended with pay pending criminal investigations or  
5 IA investigations and how long they were on the  
6 status, whatever it may have been.  
7 Does the human resources department or  
8 personnel department at the Delaware State Police  
9 determine the pace of a criminal investigation?  
10 **A. No.**  
11 Q. Does the superintendent determine the pace of a  
12 criminal investigation?  
13 **A. No.**  
14 Q. If a trooper goes out on FMLA are they paid for  
15 that leave?  
16 **A. They can be.**  
17 Q. Depending on what?  
18 **A. Vacation and sick time accrual.**  
19 Q. But if they don't have any vacation or sick  
20 time --  
21 **A. They can take it unpaid.**  
22 Q. A leave of absence?  
23 **A. You can take up to twelve weeks unpaid under**  
24 **the FMLA.**

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1 Q. And do they still get benefits during that  
2 time?  
3 **A. Yeah, they do.**  
4 MR. NEUBERGER: I'm sorry. My mind  
5 wandered.  
6 Did you just indicate that when they're  
7 getting unpaid FMLA their benefits do continue?  
8 THE WITNESS: Yes. They still accrue  
9 vacation and things like that, sure.  
10 BY MR. FITZGERALD:  
11 Q. Going back to Yeomans Exhibit Deposition  
12 Exhibit 2, the May 11th letter from Lieutenant Colonel  
13 MacLeish to Corporal Price directing him to submit a  
14 disability pension application by June 10th, does that  
15 letter contain a description of some kind concerning  
16 the rehabilitation and separation policy of the  
17 Delaware State Police?  
18 **A. Well, yeah. I mean, to the extent that it...**  
19 Q. How would you characterize what he's describing  
20 in the letter?  
21 **A. Well, basically what he's saying is if there's**  
22 **irreparable damage to the point that the person is**  
23 **disabled, if the person is permanently disabled he's**  
24 **not going to be able to carry him on for more than two**

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1 **years or actually he goes as far as to say that --**  
2 **scratch that. That's what he's saying.**  
3 Q. Is he saying that if a person is permanently  
4 disabled -- what do you mean by "permanently  
5 disabled"?  
6 **A. If you're permanently disabled within that**  
7 **two-year window, whenever you're deemed permanently**  
8 **disabled you got to go; you're not just going to hang**  
9 **on for two years is the way I interpret that.**  
10 Q. Okay. And you indicated that the colonel, then  
11 lieutenant colonel sent this letter because of  
12 conclusions from doctors?  
13 **A. Right.**  
14 Q. And his interpretation of the policy?  
15 **A. The policy.**  
16 Q. Do you know where Colonel MacLeish got his  
17 understanding of the policy?  
18 **A. It's outlined in the admin. manual, what we**  
19 **went over previously, the workmen's comp and sick**  
20 **leave.**  
21 Q. Did you have discussions with him about the  
22 policy?  
23 **A. Sure.**  
24 Q. Was this letter consistent with your

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1 understanding of the policy?  
2 **A. Yes.**  
3 Q. Was there anybody else that you spoke with,  
4 Mike Tupman, Lisa McNatt, anybody else in human  
5 resources that you spoke with about the policy?  
6 **A. No. The only person I spoke with really**  
7 **about -- well, no. I take that back.**  
8 **I have talked to Lisa McNatt about it. I**  
9 **talked to Debbie Lawhead from the state insurance**  
10 **office about it and how that might relate to other**  
11 **policies within the state.**  
12 Q. Was this description of the policy in the  
13 letter of May 11th, 2005 to Kurt Price consistent with  
14 their understanding of the policy?  
15 **A. Yes.**  
16 Q. Let me show you or look again at Yeomans  
17 Deposition Exhibit 4, the e-mails between you and  
18 Robert Williams of the T K Group. And looking at the  
19 e-mail from you to Mr. Williams of June 18th, 2004 at  
20 1:41 p.m., this is the e-mail that counsel directed  
21 you to, specifically the third paragraph.  
22 Did you consider this e-mail to be a  
23 definitive description of the policy?  
24 **A. No.**

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1 Q. Why did you ask Mr. Williams whether or not the  
2 hearing loss was irreparable?  
3 **A. Because I thought as the division and for the**  
4 **benefit of the officers -- maybe "benefit" is not the**  
5 **best word. In terms of their future with the division**  
6 **one way or the other from his position if he thought**  
7 **it was irreversible or permanent.**  
8 Q. Well, how would that fact change how they would  
9 be treated under the policy?  
10 **A. Well, because if it was deemed permanent or**  
11 **irreversible, then it goes to the policy that they**  
12 **would have to leave.**  
13 Q. And I just want to see if I can get some  
14 clarification on your testimony earlier.  
15 How was your description in this e-mail to  
16 Mr. Williams inconsistent with the description of the  
17 policy provided by Lieutenant Colonel MacLeish in his  
18 May 11th letter to Corporal Price?  
19 **A. It's inconsistent because I don't address**  
20 **permanency here in terms of permanent disability.**  
21 Q. Why do you not address it there?  
22 **A. I just didn't. I didn't. I mean, I wrote that**  
23 **but, again, like I said earlier, I was more -- this**  
24 **last line, "Would it be safe to say this type of**

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1 **hearing loss is irreparable," is really what I was**  
2 **asking the man.**  
3 Q. On June 18th, 2004 had you been able to  
4 determine whether or not it was irreparable?  
5 **A. No.**  
6 Q. That's why you're asking Mr. Williams the  
7 question?  
8 **A. Correct.**  
9 Q. Are there some essential job functions of a  
10 Delaware State Trooper that apply to every position?  
11 **A. Sure.**  
12 Q. Why are people on light-duty status given two  
13 years, if they're given two years? What's the point  
14 of two years?  
15 **A. I guess the point of two years is to afford**  
16 **them an opportunity, a window, a two-year window,**  
17 **whether it involves surgery or rehabilitation or**  
18 **therapy or whatever the case may be, to correct**  
19 **whatever the problem may be medically or in some cases**  
20 **psychologically, but also to allow them to stay in the**  
21 **workplace and produce in whatever capacity that they**  
22 **can.**  
23 Q. You mentioned five minutes ago that plaintiffs  
24 were sent for a hearing test as part of a complete

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1 medical workup?  
2 **A. Right.**  
3 Q. They were sent by the Delaware State Police.  
4 Why?  
5 **A. Well, because of the concerns that started in**  
6 **January of '04, I guess, leading up to March of '04,**  
7 **the concerns about the range, the concerns about their**  
8 **health. The lead blood level was really the first and**  
9 **original concern, was the issue of the lead.**  
10 **There were also comments about the**  
11 **baffling or things relative to hearing and we just**  
12 **asked for a complete medical workup.**  
13 Q. And where did you send them?  
14 **A. The initial testing was at Omega at Christiana.**  
15 Q. And why were they sent to Omega instead of to  
16 Dr. Green?  
17 **A. Well, actually, that's a good question because**  
18 **actually they went to Omega. I didn't direct them. I**  
19 **think they had called in. I don't know where they got**  
20 **the name Omega from and what caused them to go to**  
21 **Omega because we're actually contracted with Health**  
22 **Works. And when I first heard that they went to Omega**  
23 **I was thinking Christiana Care. I thought that's who**  
24 **we were contracted with.**



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1 But it turned out later I was advised by  
2 someone in my office that we weren't contracted with  
3 them but, regardless, they made the appointment and we  
4 said we would pay for it.

5 Q. There was some testimony or a little bit of a  
6 discussion earlier about I believe it was Baylor  
7 Exhibit 1, which is the June 25th, 2004 letter from  
8 Colonel MacLeish, then Lieutenant Colonel MacLeish to  
9 Corporal Price and the identical letter was sent to  
10 Corporal Warren instructing that they were being  
11 placed on light-duty status.

12 Does every trooper who is on light-duty  
13 status get written confirmation or a description of  
14 their status?

15 A. No.

16 Q. Why not?

17 A. I guess it's on an individual basis perhaps,  
18 but it hasn't always been historically done. I guess  
19 depending on the circumstances involved in terms of  
20 what the ailment, disability, their assignment may be.  
21 I mean, I have seen that letter, but I don't know that  
22 that has historically gone out to everyone that's been  
23 placed on light duty.

24 Q. Do you know why Corporal Warren and Corporal

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1 A. Sure.

2 Q. Did you have any conversations with Colonel  
3 Chaffinch before these letters were sent out?

4 A. I don't believe so. No.

5 Q. What role did Colonel Chaffinch have in the  
6 decisions to put Corporals Price and Warren on  
7 light-duty status?

8 A. As far as my interaction? None.

9 Q. What role did Colonel Chaffinch play, if any,  
10 in the May 2005 letters and determination that they  
11 apply for disability pensions?

12 A. I never discussed that with him. As far as my  
13 involvement and discussions with him, none. I think I  
14 only had one conversation with him about this entire  
15 issue.

16 MR. FITZGERALD: That's all I have.

17 BY MR. NEUBERGER:

18 Q. Just to wrap it up, Colonel Chaffinch was two  
19 levels above you in the chain of command at that time?

20 A. Correct.

21 Q. You reported to Lieutenant Colonel MacLeish?

22 A. That's correct.

23 Q. So it would not have been normal for you to be  
24 having meetings to discuss with Colonel Chaffinch

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1 Price got a letter in this case?

2 A. Well, I think there was some questions about  
3 what light-duty status meant and where they were going  
4 to be assigned and what vehicles they were going to be  
5 assigned and things like that. And that's I think  
6 what prompted him to send that letter.

7 Q. Who was asking those questions?

8 A. Well, I think it was namely coming from their  
9 supervisors.

10 Q. "Their supervisors" being?

11 A. Like their chain of command actually coming up  
12 all the way through Major Hughes I believe was the one  
13 that I seem to recall having a conversation about what  
14 would light duty entail and what should they be doing  
15 or not doing and that sort of thing.

16 Q. "Their" being who? What do you mean by "their  
17 supervisors"?

18 A. Corporals Price and Warren.

19 Q. In regards to the letters sent by Lieutenant  
20 Colonel MacLeish, the light duty letters and then the  
21 May 2005 letters concerning applications for  
22 disability, did you have any conversation with  
23 Lieutenant Colonel MacLeish before these letters were  
24 sent out?

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1 sending those letters, right?

2 A. Probably not.

3 Q. Right. And all you're telling us is you have  
4 no knowledge one way or the other whether Colonel  
5 Chaffinch played any role in any of those letters?

6 A. I have no knowledge what role he played, no.

7 Q. If any?

8 A. If any at all.

9 Q. He could have played a role?

10 A. He could have.

11 Q. And he might not have, he could not have played  
12 a role?

13 A. He might not have.

14 Q. You just don't know?

15 A. I don't know.

16 Q. Right. Then just to wrap it up, you were asked  
17 about two minutes ago some questions about the  
18 complete medical workup that was ordered for my  
19 clients to undergo.

20 A. Mm-hmm.

21 Q. Do you remember that?

22 A. Yes.

23 Q. Then you mentioned some issues which were  
24 involved in the medical workup. You mentioned lead in

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1 the blood was a major issue. Is that fair?  
2 **A. Yes.**  
3 Q. Now, you know that lead in the blood is  
4 something that they have been following at the range  
5 since at least the year 2000?  
6 **A. September '98, actually.**  
7 Q. Right. And you know they have been monitored  
8 every three months for their blood levels?  
9 **A. Correct.**  
10 Q. And you know that historically there's been  
11 some dispute over what's a dangerous level of lead in  
12 the blood, right?  
13 **A. Yes.**  
14 Q. At sometimes the State Police was operating  
15 under the assumption that anything approaching 20 was  
16 dangerous, right?  
17 **A. Right.**  
18 Q. And then at other times the Delaware State  
19 Police has operated under the assumption that you have  
20 to be above 40 units or whatever in the blood for a  
21 measurement to be dangerous, right?  
22 **A. Correct.**  
23 Q. So in all that time from 1998, as you indicate,  
24 to December of 2003 no steps were taken about the

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1 blood levels other than the monitoring every three  
2 months, right?  
3 **A. Correct.**  
4 Q. Right. And in all that time no steps were  
5 taken to monitor other heavy metals that these  
6 individuals would have been exposed to such as zinc,  
7 copper and other metals found in the frangible bullets  
8 they used.  
9 Is that a true statement?  
10 **A. Yeah. Not up until the Omega testing, correct.**  
11 Q. Right. And the Omega testing is what you're  
12 saying my clients went for?  
13 **A. Right.**  
14 Q. Right. Now, you described these kinds of  
15 conditions that led to the medical workup, but you  
16 weren't asked who ordered the medical workups. I  
17 don't think you testified that you ordered these  
18 medical workups.  
19 **A. No.**  
20 Q. That came from your superior officers?  
21 **A. Right.**  
22 Q. Right. That came from then Lieutenant Colonel  
23 MacLeish, right?  
24 **A. Right.**

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1 Q. And that was while Aaron Chaffinch was still  
2 the superintendent of the Delaware State Police?  
3 **A. Correct.**  
4 Q. So it's very possible that then Lieutenant  
5 Colonel MacLeish consulted with Aaron Chaffinch before  
6 he ordered the workups?  
7 **A. He may have.**  
8 MR. FITZGERALD: Objection to form.  
9 **A. He may have.**  
10 Q. But we do know it came from Lieutenant Colonel  
11 MacLeish?  
12 **A. Yes.**  
13 MR. NEUBERGER: Okay. Do you have any  
14 other questions, Robert?  
15 MR. FITZGERALD: No. I don't think so.  
16 MR. NEUBERGER: That's it. We really  
17 appreciate your coming in. Thank you.  
18 (Deposition concluded at 4:30 p.m.)  
19  
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| I N D E X  |  |          |
|--|--|----------|
| DEPONENT: JOHN A. YEOMANS  |  | PAGE     |
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| E X H I B I T S  |  |          |
| YEOMANS DEPOSITION EXHIBITS  |  | MARKED   |
| 1 Excerpt of transcript in the Bullen<br>vs. Chaffinch case  |  | 30       |
| 2 Letter to Master Corporal B. Kurt Price<br>from Colonel Thomas F. MacLeish dated<br>May 11, 2005   |  | 169      |
| 3 Letter to Master Corporal Wayne H. Warren<br>from Colonel Thomas F. MacLeish dated<br>May 11, 2005 |  | 184      |
| 4 Four pages of e-mails Bates stamped D2508<br>through D2511   |  | 188      |
| 5 E-mail to Thomas S. Neuberger from Edward<br>Ellis dated August 9, 2005                            |  | 218      |
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REPLACE THIS PAGE  
WITH THE ERRATA SHEET  
AFTER IT HAS BEEN  
COMPLETED AND SIGNED  
BY THE DEPONENT.

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1 State of Delaware )  
2 )  
3 New Castle County )  
4

CERTIFICATE OF REPORTER

5  
6 I, Kurt A. Fetzer, Registered Diplomat  
7 Reporter and Notary Public, do hereby certify that  
8 there came before me on Monday, October 3, 2005, the  
9 deponent herein, JOHN A. YEOMANS, who was duly sworn  
10 by me and thereafter examined by counsel for the  
11 respective parties; that the questions asked of said  
12 deponent and the answers given were taken down by me  
13 in Stenotype notes and thereafter transcribed by use  
14 of computer-aided transcription and computer printer  
15 under my direction.

16 I further certify that the foregoing is a true  
17 and correct transcript of the testimony given at said  
18 examination of said witness.

19 I further certify that I am not counsel,  
20 attorney, or relative of either party, or otherwise  
21 interested in the event of this suit.

22 Kurt A. Fetzer, RDR, CRR  
23 Certification No. 100-RPR  
24 (Expires January 31, 2008)

DATED:

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**In the Matter Of:**

**Price, et al.**

**V.**

**Chaffinch, et al.**

**C.A. # 04-956-GMS**

---

**Transcript of:**

**Nathaniel McQueen, Jr.**

**January 13, 2006**

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1 end this. Okay.  
2 Chris has a recollection, he indicates here,  
3 about you saying something about it's obvious retaliation  
4 against him and it's no wonder they are winding up getting  
5 sued because of the way they acted.  
6 Did you make a remark like that that day to  
7 him?  
8 **A Not that I recall.**  
9 Q Okay. So you don't recall that one. Okay.  
10 Then he says, I think you're a great trooper or  
11 something to that effect.  
12 Did you say anything like that to him that day,  
13 if you recall?  
14 **A I'm sure -- that sounds like something I would have**  
15 **said, yeah.**  
16 Q Then he concludes with his memory saying something  
17 like you said something to the effect that you have known  
18 him for a long time and what they are doing to you is not  
19 right.  
20 Does that jog your memory about something you  
21 might have said that day?  
22 MR. FITZGERALD: That's a compound question.  
23 MR. NEUBERGER: Okay. Let me break that down.  
24 It's really two questions there.

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1 BY MR. NEUBERGER:  
2 Q Chris is indicating that he has a memory that, as  
3 part of your conversation, you said something to the effect  
4 of what they are doing to you is not right. Does that jog  
5 your memory of anything you said?  
6 **A Yes.**  
7 Q So that sounds like something you said to him that  
8 day?  
9 **A Yes.**  
10 Q And does it sound like you mentioned that you have  
11 known Chris for a long time that day?  
12 **A Yes.**  
13 Q Do you recall saying anything about it's obvious  
14 retaliation that day?  
15 **A No.**  
16 Q Okay. Why don't we take a quick break and then I  
17 will be done and then we'll see how long he wants to take.  
18 **A Okay.**  
19 MR. NEUBERGER: Thank you.  
20 (A brief recess was taken.)  
21 MR. NEUBERGER: Robert, I don't have any other  
22 questions. Maybe you do.  
23 EXAMINATION  
24 BY MR. FITZGERALD:

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1 Q At the commanders' meeting, the troop commanders'  
2 and section chiefs' meeting in July 2004, you indicated that  
3 towards the end of the meeting but during the meeting, those  
4 present were asked what roles would be played at Corporal  
5 Shea's funeral, is that correct?  
6 **A Yes.**  
7 Q And you gave a list of people you had selected to  
8 assist you, is that correct?  
9 **A Yes.**  
10 Q Do you remember who was on that list, who first  
11 offered?  
12 **A I know Chris was on there. I think Sergeant**  
13 **Kracyla, Sergeant Rob Kracyla. I think it was probably**  
14 **Sergeant Royster. And I think at the time, I don't know if**  
15 **he was a sergeant or corporal at the time. Sergeant Bond.**  
16 **Those are probably some of the names that I mentioned**  
17 **initially.**  
18 Q Was Al Parton one of those?  
19 **A And Al Parton.**  
20 Q And you indicated, when you listed these troopers,  
21 then Colonel Chaffinch gave you a look, is that right?  
22 **A Yes.**  
23 Q And you don't recall Lieutenant Colonel, then  
24 Lieutenant Colonel MacLeish, giving you a look, is that

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1 correct?  
2 **A That's correct.**  
3 Q Did anybody say anything at that meeting and after  
4 you gave that list that Chris Foraker should not participate  
5 in Corporal Shea's funeral?  
6 **A No.**  
7 Q There was testimony that alternative names were  
8 offered during that meeting, is that correct?  
9 **A Yes.**  
10 Q Do you remember who gave those alternatives?  
11 **A I want to say it was Major Hughes.**  
12 Q Did Aaron Chaffinch offer alternatives?  
13 **A No.**  
14 Q Did Lieutenant Colonel MacLeish offer alternatives?  
15 **A No.**  
16 Q When Major Hughes offered the alternatives, do you  
17 know why he gave a list of different names?  
18 **A No.**  
19 Q Did he suggest that he was giving different names to  
20 replace Chris Foraker?  
21 **A No.**  
22 Q Did you understand him to be providing alternatives  
23 for Chris Foraker?  
24 **A No.**

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1 Q During that meeting, after you gave your list, did  
2 anyone mention that perhaps not everyone on your list would  
3 be able to participate?  
4 **A Yes.**  
5 Q Do you remember who that was, who mentioned not  
6 everybody can participate?  
7 **A I think it might have been Major Papili said they**  
8 **thought Al was not available or something like that.**  
9 Q Al Parton?  
10 **A Yes.**  
11 Q You indicated before that Chris, you used Chris  
12 Foraker because you had made up your mind to use Chris  
13 Foraker?  
14 **A Yes.**  
15 Q Did anyone tell you during the meeting or after the  
16 meeting not to use Chris Foraker at Corporal Shea's funeral?  
17 **A No.**  
18 Q Did Lieutenant Colonel MacLeish ever tell you not to  
19 use Chris Foraker?  
20 **A No.**  
21 Q Did he ever tell you that he was not pleased with  
22 the selection of Chris Foraker?  
23 **A No.**  
24 Q Did Colonel Chaffinch tell you not to use Chris

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1 Foraker?  
2 **A No.**  
3 Q Did he ever tell you that he was displeased with  
4 that selection?  
5 **A No.**  
6 Q On page 190 of Chris Foraker's deposition, lines 18  
7 through 20, he said, his words were, quote, if looks could  
8 kill, you'd be dead. Referring to the look that Colonel  
9 Chaffinch gave to me.  
10 As I read that, that's Chris Foraker's  
11 suggestion that that's what you told him in the parking lot  
12 of the Lewes Fire Hall. Is that how you read that?  
13 **A Yes.**  
14 Q You did not see any look that Colonel Chaffinch gave  
15 Chris Foraker, is that right?  
16 **A Not that I recall.**  
17 Q During the commanders' meeting?  
18 **A No.**  
19 Q You subsequently found out that Lieutenant Colonel  
20 MacLeish had asked Chris Foraker to leave the July 2004  
21 meeting, is that right?  
22 **A Yes.**  
23 Q Do you know why he asked him to leave? Did  
24 Lieutenant MacLeish ever tell you why he asked him to leave?

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1 **A No.**  
2 Q Did you ever have any conversations with Chris  
3 Foraker wherein he told you what Lieutenant Colonel MacLeish  
4 said to him that day?  
5 **A Not that I can remember the specifics of.**  
6 Q But you subsequently understood that he asked him  
7 not to come back?  
8 **A Yes.**  
9 Q To that meeting.  
10 And did Chris Foraker come to the August  
11 meeting? Do you recall?  
12 **A Not that I remember.**  
13 Q Were you at the August meeting?  
14 **A I'm pretty sure I was.**  
15 Q Did you consider the fact, what you understood to be  
16 Lieutenant Colonel MacLeish's asking Chris Foraker not to  
17 attend the July meeting, to be a demotion of Chris Foraker?  
18 **A No.**  
19 Q After that meeting and to this day, do you consider  
20 Chris Foraker to be the NCOIC of the firearms training unit  
21 with all the rights, duties and responsibilities that go  
22 with that position?  
23 **A Yes.**  
24 Q You testified as to Chris Foraker's reputation for

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1 honesty. Do you remember that?  
2 **A Yes.**  
3 Q You said it was pretty good?  
4 **A Yes.**  
5 Q Have you read or heard anything since December 2003  
6 that made you change your mind as to his reputation for  
7 honesty?  
8 **A No.**  
9 Q Do you consider Chris Foraker to be a good trooper?  
10 **A Yes.**  
11 Q Have you read or heard anything since December 2003  
12 that made you rethink that conclusion?  
13 **A No.**  
14 Q Do you consider him to be a competent trooper?  
15 **A Yes.**  
16 Q Do you consider him to be a competent NCOIC of the  
17 FTU?  
18 **A Yes.**  
19 Q Have you read or heard anything since December of  
20 2003 that made you rethink that conclusion?  
21 **A No.**  
22 MR. FITZGERALD: I have no further questions.  
23 MR. NEUBERGER: I'll have to follow up on two  
24 things.

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1 Q And they would also list all the other people being  
2 invited to the commanders' meeting, right?  
3 **A Yes.**  
4 MR. FITZGERALD: Objection to form.  
5 BY MR. NEUBERGER:  
6 Q Do you know one way or the other that, prior to this  
7 July meeting, Chris Foraker, while he was the NCOIC, was one  
8 of the people listed on those notices of people being  
9 invited to the commanders' meetings?  
10 MR. FITZGERALD: Objection to form.  
11 BY MR. NEUBERGER:  
12 Q You'll have to answer. I'm asking you, are you  
13 aware -- and if you don't know, you don't know. I'm asking  
14 you from your memory. You can always go back and look.  
15 But are you aware that, prior to that July  
16 meeting, Chris Foraker was listed as one of the people being  
17 invited to the commanders' meeting.  
18 MR. FITZGERALD: Objection to form.  
19 THE WITNESS: I don't know one way or the  
20 other.  
21 BY MR. NEUBERGER:  
22 Q And are you aware even after that July meeting, that  
23 Chris Foraker was still one of the people listed on those  
24 e-mails as being invited to the commanders' meetings?

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1 MR. FITZGERALD: Objection to form.  
2 THE WITNESS: I don't know.  
3 BY MR. NEUBERGER:  
4 Q You don't know one way or the other, right?  
5 **A No.**  
6 Q And if Chris Foraker, based on your experience with  
7 the State Police, if Chris Foraker had been attending those  
8 commanders' meetings before July of that year, okay, and if  
9 he was ordered not to come anymore, that would have been a  
10 change of his duties and responsibilities, wouldn't it?  
11 **A Yes.**  
12 MR. NEUBERGER: Okay. Robert, do you have  
13 anymore questions?  
14 EXAMINATION  
15 BY MR. FITZGERALD:  
16 Q Who has a duty to attend troop commanders' and  
17 section chiefs' meetings?  
18 **A Usually troop commanders, section chiefs and usually**  
19 **the lieutenants from all the respective sections.**  
20 Q Is the e-mail that goes out an invitation to attend  
21 or is it a notice that the meeting is going to occur?  
22 **A Notice that the meeting is going to occur.**  
23 Q What goes on at these meetings?  
24 **A Generally there are discussions about criminal and**

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1 **traffic productivity. Things that are going on in each**  
2 **troop or section.**  
3 Q Is policy made at these meetings?  
4 **A No.**  
5 MR. FITZGERALD: That's all I have.  
6 MR. NEUBERGER: Just a follow-up.  
7 EXAMINATION  
8 BY MR. NEUBERGER:  
9 Q You know retired Major David Baylor?  
10 **A Yes.**  
11 Q You have worked with him, right?  
12 **A Yes.**  
13 Q In fact, when he was the operations commander for  
14 New Castle County, you reported directly to him, right?  
15 **A Yes.**  
16 Q Now, Major Baylor I believe has testified in this  
17 case that the NCOIC of the firearms training unit has always  
18 attended the commanders' meetings up until this July date  
19 that we have been talking about today. If that's his  
20 testimony, would you disagree with that?  
21 MR. FITZGERALD: I'll only object to the extent  
22 that his testimony will speak for itself.  
23 BY MR. NEUBERGER:  
24 Q He had more years on the force than you did?

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1 **A Yes.**  
2 Q And I'm saying, would you have any facts that you  
3 could point to that would dispute a contention that the  
4 NCOIC of the firearms training unit has always attended  
5 those commanders' meetings up until this July meeting?  
6 **A No.**  
7 Q Sergeant Parton, you remember he was the NCOIC of  
8 the unit, right?  
9 **A Yes.**  
10 Q And you probably remember Sergeant Fitzpatrick being  
11 the NCOIC of the unit, right?  
12 **A Yes.**  
13 Q Do you have a memory of them attending commanders'  
14 meetings over the years when you attended?  
15 **A Not specifically.**  
16 Q Okay. You don't remember one way or the other  
17 whether they attended?  
18 **A No.**  
19 MR. NEUBERGER: All right. That's fine.  
20 EXAMINATION  
21 BY MR. FITZGERALD:  
22 Q Do you remember whether or not Chris Foraker, when  
23 he was NCOIC of the firearms training unit in the beginning  
24 of 2002, 2001, 2002, do you remember him going to these

11 (Pages 38 to 41)



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**V.**

**Chaffinch, et al.**

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**Transcript of:**

**Gregory Allen Warren**

**January 11, 2006**

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1 So I may very well have gone over and met  
2 with them or called for an emergency meeting or something  
3 to talk about, I guess, what had transpired in that last  
4 couple of days, yes. But I don't know. I mean, you may  
5 have a date for me that you can refresh my memory or  
6 whatever.

7 Q. Well, that's what I'm asking you, February 2nd,  
8 2004.

9 A. I don't remember. I don't remember. It's been  
10 too long ago.

11 Q. Go back to the previous page. That's the  
12 next-to-the-last page of Exhibit D-2.

13 A. Okay.

14 Q. I see where you've enumerated things that you  
15 have said to the staff following your meeting with the  
16 lieutenant colonel; right?

17 A. Yes.

18 Q. There are five items?

19 A. Yes.

20 Q. The last of those items is the paper air mask  
21 item that you've discussed with me this morning. Do you  
22 see that?

23 A. Yes.

24 Q. What did you say in response to the lieutenant

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1 paper dust mask is for." And here I've been discussing,  
2 you know, types of heavy metals and things like that that  
3 I don't think a paper dust mask was designed to, you  
4 know, to filter out.

5 Q. What was his response when you said that would  
6 impair shooting?

7 A. He said, "No, absolutely not." He said, "That's  
8 what I want done." And he looked again, like I said,  
9 over to Major Eckrich and said, "Don't we carry those in  
10 stock? Maybe somebody back in the crime lab uses them or  
11 something."

12 But -- I can't remember what Paul's  
13 response was, but he said, "They will be gotten  
14 immediately. I mean, if we don't have them in stock,  
15 purchase them now." So I carried that message back.

16 Q. Did the shooters at the range ever actually use  
17 the paper dust masks?

18 A. Not that I'm aware of. That would be something  
19 you'd have to ask because I wasn't physically up there.  
20 But to the best of my knowledge, that fell through  
21 because my personal opinion is after Ralph and I left the  
22 room, Paul Eckrich probably told him -- I don't know what  
23 I would have done, but I wouldn't have done that because  
24 that ended up being rescinded.

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1 colonel's suggestion that people wear the paper air  
2 masks?

3 A. Well, I hate to be rude here, but I kind of  
4 chuckled a little bit and I said, "You got to be kidding  
5 me." And he didn't smile. So that's when I knew, you  
6 oh, I guess I shouldn't have just chuckled at that. And  
7 that's when he went ahead and said, "Well, we have these  
8 things in stock, don't we?" And he looked at Major  
9 Eckrich because I remember Major Eckrich looking at -- I  
10 think even Major Eckrich was like flabbergasted. And  
11 Ralph, I looked over at Ralph and Ralph was just sitting  
12 there almost like speechless. Like, a paper dust mask?  
13 I mean, has he been listening to anything that's been  
14 transpiring over the last month and a half?

15 So that's about all I can elaborate for you  
16 about that.

17 Q. My question is: Did you say anything to him  
18 other than chuckling?

19 A. I chuckled and I said, "You got to be kidding."  
20 I said, "You want everybody to wear a paper dust mask?"  
21 And I said, "That's going to obviously impede shooting up  
22 there."

23 And I said, "On top of that, I mean, it's  
24 not going to do anything. You and I both know what a

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1 And, in fact, when I called Lieutenant  
2 Colonel MacLeish back later to say, "Listen, Colonel, the  
3 guys say that won't work. You can't talk through the  
4 masks. They won't be able to give commands. It's going  
5 to be a safety issue amongst everything else while  
6 shooting is going on."

7 Well, it was funny. He told us to have  
8 this mask. He didn't think it was funny. Then he  
9 ordered us a second time. And the major, "I want these  
10 masks up there now. And if you have to, order them."

11 But when I went back to him the following  
12 day or two days later and we talked about this, it was  
13 like, well, listen, that was taken out of context. I  
14 don't really mean I want everybody to wear a paper dust  
15 mask. I just meant to show my concern for everyone up  
16 there and that we should try to do something.

17 So then he was trying to make it look like  
18 I was concerned about everyone and maybe I overreacted,  
19 but I didn't mean what I said. Well, when, in fact, it  
20 was very obvious he did mean what he said to the point I  
21 put it in the report that it should be done.

22 Q. At any point did you tell MacLeish that you  
23 thought the range should be shut down because it was  
24 unsafe?

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1 A. No. I told him it would have to be shut down.  
2 Okay? But not at that very second because the guys were  
3 working like crazy to try to get the recruit class done.  
4 They didn't want to see the recruits not graduate because  
5 we couldn't finish the shoot. Because we might be able  
6 to find them another place to shoot, but, one, the  
7 classes are fairly large, but in the downtime it would  
8 take us to find another range, to set up a schedule, to  
9 move them to that location, it would have backed up the  
10 entire recruit graduation and everything else.  
11 And we also -- we train municipals on top  
12 of just troopers. It would have been a political  
13 nightmare. It just would have been horrendous trying to  
14 tell everybody the recruits aren't graduating, it's going  
15 to be put off for a couple more weeks because we had to  
16 move to another range.  
17 So I think everybody was trying to work to  
18 get the recruits done and then realized the range will  
19 have to be shut down immediately as soon as they are  
20 done.  
21 Q. Did you tell the lieutenant colonel that the  
22 range should not be shut down because you were trying to  
23 get the recruit class through?  
24 A. No. That came out of just a general

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1 conversation. That's what we all came to when we were  
2 sitting in the room together.  
3 Q. I'm asking what you said, not what the general  
4 conversation was.  
5 Did you ever tell the lieutenant colonel  
6 that the range should be shut down because it was unsafe?  
7 A. Not shut down that second, but I told him, yes,  
8 we are going to have to shut it down.  
9 Q. You told him you would have to shut it down  
10 eventually?  
11 A. Oh, absolutely. I don't mean eventually like a  
12 month or two later. I meant eventually as in the minute  
13 we finish shooting this group of recruits and we get them  
14 certified so they can graduate, we need to close this  
15 thing down and just lock it up and then have the experts  
16 come in and work on this for us.  
17 Q. Look at Exhibit 17 for a minute. After you  
18 received this e-mail from Chris Foraker, why didn't you  
19 go to the colonel and tell him you thought the range  
20 should be shut down?  
21 A. Because we were trying to get that last group of  
22 recruits in. And that seemed to be -- the range officers  
23 were working hard. I think they had the recruits' best  
24 interests in mind. MacLeish didn't want it shut down,

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1 obviously, because he knew that that would go public and  
2 everybody would know about it and it would be a real pain  
3 in his tail. And so I think everybody just said let's  
4 finish up this group of recruits and then we'll shut it  
5 down if we have to.  
6 Q. Did MacLeish tell you he didn't want it shut  
7 down?  
8 A. No, I don't recollect him saying, no, don't shut  
9 it down or shut it down, either one.  
10 Q. Go back to Exhibit D-2, again, please. The  
11 next-to-the-last page, which is this chronology we've  
12 been looking at, could you go up to the fourth paragraph  
13 from the bottom of the page? It starts with the words  
14 "Captain Warren."  
15 A. Yes.  
16 Q. Do you see that? It says: "Captain Warren  
17 contacted by Lieutenant Colonel MacLeish" --  
18 A. Yes.  
19 Q. It says here that you were "advised to present a  
20 report ASAP that could be used to prepare a news  
21 release" -- I guess this isn't quite grammatical, but  
22 "from on the problems, issues and concerns at the Range."  
23 Do you see that? Was that contact that occurred on  
24 Friday, January 30th?

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1 A. That -- I don't recollect if it was on Friday,  
2 the 30th, or, you know, within a couple days afterwards.  
3 That I don't recollect. Or even a couple days  
4 beforehand. Because as I said, we just didn't meet on  
5 the 30th. There were verbal conversations going on on  
6 the phone, in the hallway, and things like that where he  
7 was made aware of what was going on.  
8 So in actuality, he could have told me that  
9 a couple days before January 30th, but it had to be  
10 within that range for me to place it right there.  
11 Q. Did you ever prepare such a report?  
12 A. No, no. He wanted me to go ahead and do this.  
13 And then before I ever got a chance to actually put the  
14 report together, I was told, "Hold off on that. This  
15 thing is going to Facilities Management." Before I ever  
16 got to the point where I actually put another report  
17 together, I remember being told we are going to basically  
18 take this thing out of the hands of the State Police and  
19 we are going to get Facilities Management involved in  
20 this and -- now, I don't know what conversations took  
21 place with cabinet secretaries and things, but I think  
22 from what I'm gathering now after the fact, probably  
23 Secretary Homer said basically I'll take this thing over  
24 since it deals with the building and I'll make it all